

# TRANSCRIPT OF PROCEEDINGS

U.S. DEPARTMENT OF LABOR  
MINE SAFETY AND HEALTH ADMINISTRATION

MEETING FOR PUBLIC COMMENT )  
)  
30 CFR PART 46 )  
TRAINING AND RETRAINING OF )  
MINERS ENGAGED IN SHELL )  
DREDGING OR EMPLOYED AT )  
SAND, GRAVEL, SURFACE STONE, )  
SURFACE CLAY, COLLOIDAL )  
PHOSPHATE, OR SURFACE )  
LIMESTONE MINES )

Pages: 1 through 143  
Place: Denver, Colorado  
Date: December 9, 1998

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BEFORE THE

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MINE SAFETY AND HEALTH ADMINISTRATION

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 PHOSPHATE, OR SURFACE )  
 LIMESTONE MINES )

Valencia Room  
 Embassy Suites Hotel  
 4444 N. Havana Street  
 Denver, Colorado

Wednesday,  
 December 9, 1998

The above-entitled matter came on for hearing,  
 pursuant to notice, at 8:00 a.m.

PANEL MEMBERS:

KATHY ALEJANDRO  
 Metal and Nonmetal Mine Safety and Health  
 Arlington, Virginia  
 KEVIN BURNS  
 Metal and Nonmetal Mine Safety and Health  
 Arlington, Virginia  
 ROSLYN FONTAINE  
 Office of Standards Regulations and  
 Variances  
 ROD BRELAND  
 Western Operations Manager  
 Educational Field Services

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1                                   P R O C E E D I N G S

2                   CHAIRPERSON ALEJANDRO:   Good morning.   My name is  
3   Kathy Alejandro.   And I am with the Mine Safety and Health  
4   Administration, specifically with Metal and Nonmetal Mine  
5   Safety and Health in Arlington, Virginia.

6                   And on behalf of MSHA, I would like to welcome  
7   you to the second of seven public meetings on regulations  
8   for miner safety and health training.

9                   These meetings are intended to give individuals  
10   and organizations, including miners and their  
11   representatives and mine operators, both large and small, an  
12   opportunity to present their views on the types of  
13   requirements that will result in the most effective miner  
14   safety and health training.

15                  These regulations would apply at those nonmetal  
16   surface mines where MSHA is currently prohibited from  
17   enforcing existing training requirements.

18                  I'd like to take this opportunity to introduce  
19   the other members of the MSHA panel who are here with me  
20   this morning.

21                  To my far right is Rod Breland, with the Mine  
22   Safety and Health Administration, who is Western Operations  
23   Manager of the newly formed Educational Field Services  
24   within MSHA.

25                  Kevin Burns is to my immediate right.   He is also

1 with Metal and Nonmetal Mine Safety and Health.

2 And Roslyn Fontaine, to my left, is with the  
3 Office of Standards Regulations and Variances.

4 Since 1979, MSHA has been guided by a rider to  
5 its appropriations.

6 The restriction currently states, "None of the  
7 funds appropriated shall be obligated or expended to carry  
8 out Section 115 of the Federal Mine Safety and Health Act of  
9 1977, or to carry out that portion of Section 104(g)(1) of  
10 such act relating to the enforcement of any training  
11 requirements with respect to shell dredging or with respect  
12 to any sand, gravel, surface stone, surface clay, colloidal  
13 phosphate, or surface limestone mining."

14 In the omnibus budget passed by Congress on  
15 October 21, 1998, MSHA was directed to work with the  
16 affected industries, mine operators, workers, labor  
17 organizations, and other affected and interested parties to  
18 promulgate final training regulations for the affected  
19 industries by September 30, 1999.

20 It is understood that these regulations are to be  
21 based on a draft submitted to MSHA, by the Coalition for  
22 Effective Miner Training, no later than February 1, 1999.

23 MSHA expects to publish a proposed regulation in  
24 the Federal Register sometime in the early spring of 1999.

25 The regulations that MSHA will be developing must

1 include the minimum requirements in Section 115 of the  
2 Federal Mine Safety and Health Act of 1977.

3 To summarize those requirements, Section 115  
4 provides that every mine operator shall have a health and  
5 safety training program that is approved by the Secretary of  
6 Labor and that complies with certain minimum requirements.

7 Section 115 specifies that surface miners are to  
8 receive no less than 24 hours of new miner training, no less  
9 than eight hours of refresher training annually, and task  
10 training for new work assignments.

11 Section 115 also requires that the training cover  
12 specific training areas; provides the training is to be  
13 conducted during normal work hours, at normal pay; requires  
14 that miners be reimbursed for additional costs they incur  
15 incidental to this training; and provides that mine  
16 operators must maintain miners' training certificates and  
17 furnish such records to the miner.

18 In addition to these requirements, MSHA is  
19 looking for suggestions and comments as to how best to  
20 achieve effective miner safety and health training  
21 consistent with the Mine Act, including any additional  
22 requirements that should be included in the proposed rule,  
23 and most importantly, why.

24 A public meeting has already been held in  
25 Northbrook, Illinois. That was earlier this week. Other

1 public meetings like this one today have been scheduled at  
2 five other locations in the coming weeks, including Albany,  
3 New York; Portland, Oregon; Ontario, California; Dallas; and  
4 Atlanta.

5 This is designed to give as many individuals and  
6 organizations as possible an opportunity to present their  
7 views on this important subject.

8 We intend to conduct this meeting in an informal  
9 manner. And a court reporter is making a verbatim  
10 transcript of the proceedings.

11 I would ask that anyone who has signed up in  
12 advance to speak who wishes to speak at this meeting, do  
13 sign up on the speakers list, which is, you know, currently  
14 right here, but I will make it available to people as the  
15 meeting proceeds.

16 As I said earlier, we also ask that everyone who  
17 is here sign up, whether or not you wish to speak, sign up  
18 on the attendance list, which is, right now, in the back of  
19 the room.

20 You may also send us written comments after this  
21 meeting is over, if you wish. We haven't established a  
22 formal deadline for submission of written comments to MSHA,  
23 but I would encourage you to submit anything that you wish  
24 before -- on or before February 1, 1999. And this will  
25 ensure that your suggestions and input is fully considered.

1           Although we are most interested in what you have  
2   to say to us, we will attempt to answer any questions that  
3   you may have as the meeting progresses.

4           And we're specifically interested in comments  
5   addressing certain areas, although you certainly are  
6   strongly encouraged to comment on any issue related to miner  
7   safety and health training at currently exempt mines.

8           The issues we're particularly interested in were  
9   outlined in the November 3 Federal Register notice that  
10   announced this schedule of these public meetings. And I  
11   will give you a short summary of those issues.

12           Should certain terms, including new miner and  
13   experienced miner, be defined?

14           Which subjects should be taught before a new  
15   miner is assigned work, even if the work is done under close  
16   supervision?

17           Should training for inexperienced miners be given  
18   all at once, or over a period of time, such as several weeks  
19   or months?

20           Should supervisors be subject to the same  
21   training requirements as miners?

22           Should task training be required whenever a miner  
23   receives a work assignment that involves new and unfamiliar  
24   tasks?

25           Should specific subject areas be covered during



1 annual refresher training? If so, what subject areas should  
2 be included?

3 Can the eight hours of annual refresher training  
4 required by the Mine Act be completed in segments of  
5 training lasting less than 30 minutes?

6 Should the records of training be kept by the  
7 mine operator at the mine site, or can they be kept at other  
8 locations?

9 Should there be minimum qualifications for  
10 persons who conduct miner training? If so, what type of  
11 qualifications are appropriate?

12 I would now like to introduce the first speaker  
13 this morning. We ask that all speakers who come up to speak  
14 state and spell their names for the court reporter before  
15 beginning their presentation. Thank you very much.

16 The first speaker that we have on the list is Ken  
17 Pike, from Montana Limestone. Mr. Pike?

18 Okay. Yes. We'll come back to him.

19 Rod Stewart, from Colorado Rock Products  
20 Association.

21 Actually, could you come up, and why don't you  
22 sit at this table? I think that will work the best. I  
23 don't think that mic is hooked up, actually.

24 MR. STEWART: Thank you. My name is Rod Stewart.  
25 I'm the Executive Director of the Colorado Rock Products

1 Association. And that name is spelled S-T-E-W-A-R-T.

2 In its November 3, 1998 notice in the Federal  
3 Register, announcing seven public hearings around the  
4 country, MSHA raises several questions it says it would like  
5 to have answered before it begins developing a proposed  
6 training rule for exempt industries.

7 I would like to try to address some of those  
8 issues this morning, if I may.

9 Under the section of definitions, should certain  
10 terms, including new miner and experienced miner, be  
11 defined? Yes. Our answer would be, yes.

12 If so, how should these terms be defined? I'll  
13 use the term CRPA for brevity, which is the -- which is my  
14 organization, Colorado Rock Products, if I may.

15 CRPA offers the following draft definitional  
16 language.

17 New miner: A newly hired, inexperienced employee  
18 who has not received 24 hours of new miner training required  
19 in Section 115(a)(2) of the Mine Safety and Health Act of  
20 1977.

21 For experienced miner: An employee who has  
22 completed 24 hours of new miner training or who has had at  
23 least 12 months of mining experience.

24 CRPA would also like to offer a definition of a  
25 competent person. And that definition would be: A

1     competent person means a person designated by the operator,  
2     having abilities and experience that fully qualify him or  
3     her to perform the duty to which he or she was assigned.

4             New miner training. Section 115 of the Mine Act  
5     lists several subjects that must be covered by training for  
6     new, inexperienced miners at surface mines, including  
7     instruction in the rights of miners and their  
8     representatives, under the Mine Act; use of self-rescue  
9     devices, where appropriate and respiratory devices, where  
10    appropriate; hazard recognition; emergency procedures;  
11    electrical hazards; first aid; a walk-around training; the  
12    health and safety aspects of the tasks to which the miner  
13    will be assigned.

14            The next question, Which of these subjects should  
15    be taught before a new miner is assigned work, even if the  
16    work is done under close supervision?

17            A new miner should be taught all items listed in  
18    Section 115 of the Mine Act. A possible exception is first  
19    aid, which requires a significant amount of instruction up  
20    front and for years thereafter for persons to maintain their  
21    first aid skills. First aid might best be addressed in a  
22    separate forum. The new first aid standard may be just that  
23    forum.

24            Question: Should training for inexperienced  
25    miners be given all at once, or over a period of time, such

1 as several weeks or months?

2 With the exception of a short block of  
3 instruction at the beginning of employment, training should  
4 be spread out over a period of months.

5 When MSHA proposed Part 48, in 1979, operators  
6 complained that the high turn-over rate then characteristic  
7 to the industry meant that an operator might never recoup  
8 the substantial up-front investment represented by MSHA's  
9 proposed requirement for 24 hours of instructions before a  
10 miner began work.

11 MSHA responded by requiring eight hours of  
12 training up front, with the remaining 16 to be completed  
13 within 60 days.

14 During the senatorial debate on the rider,  
15 Senator Williams offered an amendment of his own that would  
16 cut initial training to six hours, with the remaining 18  
17 hours required over six months. Senator Williams was  
18 responding to operator complaints that they needed even more  
19 flexibility than what MSHA had proposed.

20 Senator Williams' amendment was defeated. But  
21 it's important to be aware of operators' needs then and of  
22 attempts to accommodate them, for many of the circumstances  
23 present then remains the same today.

24 CRPA expects MSHA to demonstrate as much  
25 flexibility in responding to operators' needs today as was

1 demonstrated 20 years ago.

2 Question: Should this decision be left to the  
3 discretion of the mine operator?

4 The mine operator should have maximum discretion  
5 to offer the training during periods within the opening  
6 months of an inexperienced miner's employment, when training  
7 will do the most good.

8 The optimal time to train someone is immediately  
9 before he or she needs the instruction in order to do the  
10 job. And the operator must have flexibility to assure that  
11 that's when the training occurs.

12 Question: What are the advantages and  
13 disadvantages of spreading training over an extended period  
14 of time?

15 Two key advantages have already been mentioned:  
16 One, to minimize an operator's loss if the employee leaves  
17 employment within the first few months of the hire; and two,  
18 to place as close together in time as possible, for maximum  
19 effectiveness, the need for knowledge and the application of  
20 that knowledge to the task at hand.

21 The primary disadvantage is the possibility a new  
22 employee will undertake a task for which he has not yet been  
23 trained. However, this possibility can be minimized by  
24 counseling the employee against the practice and by close  
25 supervision during the early months of employment.

1                   Question: Should supervisors be subject to the  
2 same training requirements as miners?

3                   Supervisors should be taught what the miners are  
4 taught. In addition, it might also be helpful for  
5 supervisors to know how to motivate employees to work  
6 safely, evaluate task positions, plan safe procedures, and  
7 conduct safety meetings.

8                   Task training. Should training be required  
9 whenever a miner receives an assignment that involves new  
10 and unfamiliar tasks? Yes. To ensure the job is  
11 accomplished in a safe and efficient manner.

12                  Annual refresher training. Should specific  
13 subject areas be covered during annual refresher training?  
14 Yes.

15                  If so, what subject areas should be included?  
16 The subjects covered in annual refresher training should be  
17 appropriate to the tasks performed at each individual mine  
18 site.

19                  Question: Can the eight hours of annual  
20 refresher training required by the Mine Act be completed in  
21 segments of training lasting less than 30 minutes?

22                  Yes. Training should incorporate new knowledge  
23 about adult education, including the average adult's  
24 attention span and ability to retain information. Average  
25 adult attention span is less than 30 minutes, and this fact

1     should be taken into account. A good, effective training  
2     module may only last ten minutes, or it could last longer.

3             Operators need the flexibility to design training  
4     to meet unique and constantly changing circumstances. The  
5     worth of training is not in its length, but in its  
6     effectiveness to modify the behavior of the miner regarding  
7     health and safety.

8             When Part 48 was proposed, in 1979, operators  
9     complained that a consecutive eight hours of annual  
10    refresher training would interrupt production. MSHA  
11    responded by allowing training in as little as half-hour  
12    segments. CRPA now asks the agency to show the same level  
13    of flexibility in not requiring a specific length at all.

14            Training certificates. Question: Should the  
15    records of training be kept by mine operators at the mine  
16    site, or should the regulation allow records to be kept at  
17    other locations?

18            CRPA believes that the regulation should allow  
19    the mine operator to maintain training records at locations  
20    other than the mine site.

21            In many cases, mine operators operate multiple  
22    mine sites, and often, the smaller sites are not well suited  
23    for record maintenance, especially if records are  
24    computerized. Furthermore, centralized record management is  
25    likely to be more reliable and more cost effective than

1 disseminated record management for many operators.

2 Operators should be allowed to maintain records  
3 in centralized locations, so long as the records can be made  
4 available for inspection by MSHA in a reasonable amount of  
5 time.

6 Qualifications of instructors. Question: Should  
7 there be minimum qualifications for persons who conduct  
8 miner training and, if so, what kind of qualifications are  
9 appropriate?

10 CRPA believes that operators should be given the  
11 widest possible flexibility in crafting effective training  
12 programs that meet the needs of their miners.

13 CRPA believes that the regulations should  
14 establish the basic content and duration of training, as  
15 provided by the statute, but that the operators should be  
16 given the discretion to determine how appropriate training  
17 should be provided and by whom.

18 CRPA believes that the regulations should allow  
19 an operator to conduct its own training program, to  
20 participate in training programs conducted by MSHA, or to  
21 participate in training programs conducted by State or other  
22 Federal agencies, associations of mine operators, miner  
23 representatives, other mine operators, or contractors,  
24 consultants, private associations, or educational  
25 institutions.



1 CRPA believes that the regulations should allow  
2 for training to be provided through modern, technological  
3 means, including computerized training, multimedia, web-  
4 based learning, teleconferencing, and other such methods.

5 CRPA believes that restricting all training to a  
6 traditional classroom instruction by a limited pool of  
7 certified instructors would deprive operators of the  
8 flexibility needed to develop training programs responsive  
9 to the unique circumstances of each mining operation.

10 Accordingly, CRPA believes that the criterion for  
11 evaluating training should not be whether the instructor is  
12 certified, but whether adequate and appropriate training has  
13 been provided. CRPA believes that a competent person, as  
14 previously defined, is fully capable of providing such  
15 training.

16 And that concludes my comments. Thank you very  
17 much.

18 CHAIRPERSON ALEJANDRO: Mr. Stewart, I just have  
19 a couple of questions, and -- I mean, I don't want to put  
20 you on the spot, but if you can, answer them, and if you  
21 can't, say so.

22 You had indicated that you felt that definitions  
23 were appropriate. And you, I believe, suggested a  
24 definition of an experienced miner as someone who had had  
25 either the 24 hours of initial training or had 12 months of

1 mining experience.

2 Assume that someone has had the requisite 12  
3 months of mining experience. I guess that you're assuming  
4 they would have had the 24 hours of initial training, as a  
5 result of having worked on a mine site?

6 Or if not, someone coming on to a mine site for  
7 the first time, it's unfamiliar to them, do you think it  
8 would be appropriate to require some kind of minimum  
9 orientation training or something like that, or just rely on  
10 the eight hours of annual refresher training?

11 MR. STEWART: This is a question that's probably  
12 one of the most difficult things that our group took under  
13 consideration.

14 Take, for example, a vendor that may be servicing  
15 a soda pop machine. This is a ludicrous example, but yet it  
16 does fall under that.

17 I think the position of our group would be that,  
18 I think the responsibility for that kind of training should  
19 fall on the subcontractor that's involved.

20 CHAIRPERSON ALEJANDRO: Okay.

21 MR. STEWART: And perhaps additional limits need  
22 to be set up that delineate these kind of superfluous  
23 operations to those that are more directly involved in the  
24 mining process itself.

25 CHAIRPERSON ALEJANDRO: Okay. And I just have

1 one other question, as far as providing the annual training  
2 in intervals of less than 30 minutes.

3 We've heard at our meeting earlier, in Illinois,  
4 that a lot of operators said that this was a good idea to  
5 give the operator this kind of flexibility. However,  
6 records need to be kept of this training. Does the record  
7 keeping burden present an obstacle to that?

8 MR. STEWART: In some situations, it might,  
9 although, I agree. I do believe that records do need to be  
10 kept. That's imperative, for both sides.

11 I think the issue that we were raising is where  
12 those records will be housed. I'm not raising an issue with  
13 the need to keep training records.

14 I am raising the issue that in, for instance, out  
15 here in the West, in Colorado, for example, we may have one  
16 crew that works at multiple sites, and when they're not on  
17 that site, that site might be abandoned.

18 CHAIRPERSON ALEJANDRO: Right.

19 MR. STEWART: And that's why we're requesting a  
20 centralized location for those records to be kept, because  
21 frequently there are no structures at all in the other  
22 sites, when we're not there.

23 These are sand and gravel operations,  
24 predominantly. And due to environmental and regulatory  
25 constraints, there's usually nothing there when we're not

1       there.

2                       So that crew might move around, and that's why we  
3       would like to see them housed at a central location, not to  
4       try to get around the need for keeping records of that  
5       training. No. We recognize that is very important.

6                       CHAIRPERSON ALEJANDRO: Okay. Does anyone -- do  
7       you have any questions?

8                       MR. BRELAND: Just to follow up on that a little  
9       bit. You talked about the short time frames or the quality  
10      of the training for any refresher. And I'd like to follow  
11      up on what Kathy asked about, the record keeping burden.

12                      If you had ten-minute segments one time or 20  
13      minutes another, would you have a method in mind that you  
14      would keep track of the total amount of time, to get the  
15      eight hours of annual refresher?

16                      MR. STEWART: Well, I don't have a specific  
17      method in mind. Every company that I represent goes about  
18      it in probably a different way. I've never been really  
19      involved in the way they compile that. Most of them have  
20      safety officers that are responsible for keeping that log.

21                      MR. BRELAND: One other question. You had talked  
22      about the initial six-hour training, and then spread out the  
23      other 18. Did you have some time frame in mind to complete  
24      the 18 hours?

25                      MR. STEWART: It wasn't covered in the meetings

1     that we had. I'd be happy to poll my members and get back  
2     to you on that issue, if that's appropriate.

3                 MR. BRELAND: Well, that would be an issue.

4                 MR. STEWART: I'd be happy to do that. Is there  
5     a mechanism for me to do that?

6                 CHAIRPERSON ALEJANDRO: Yes. You could actually  
7     submit something in writing. If you've got a copy of the  
8     November 3 Federal Register notice --

9                 MR. STEWART: Yes. I do.

10                CHAIRPERSON ALEJANDRO: -- there is the address  
11     of the Office of Standards Regulations and Variances, in  
12     Arlington. If you'd just send your comments to that  
13     address, and just, you know, identify them in some fashion,  
14     that it's related to the Part 46 training initiative.

15                MR. STEWART: Okay. Thank you.

16                Any other questions? Thank you.

17                CHAIRPERSON ALEJANDRO: Thank you very much.

18                Mr. Ken Pike? Has Mr. Pike arrived?

19                We have no other speakers who have signed up to  
20     speak. Is there anyone who has not signed up who would like  
21     to speak at this time? Mr. Tuggle?

22                MR. TUGGLE: Yes. My name is Harry Tuggle. And  
23     I'm with the United Steel Workers of America, its  
24     International Safety and Health Department, out of  
25     Pittsburgh, Pennsylvania.

1           First off, we appreciate the opportunity to be  
2       here and make some comments on a long overdue set of rules  
3       here, we believe.

4           I guess I'll approach this in the same manner in  
5       the previous commenter and speaker made, going through  
6       somewhat, answering some of the specific questions of MSHA's  
7       interest, and expanding on a little bit of some other  
8       matters.

9           And the first question about, Should certain  
10      terms, including new miner and experienced miner, be  
11      defined?

12          And I don't really have a problem with that, to  
13      be listed within the definitions. A segment of the rule is  
14      somewhat already explained throughout the current  
15      regulations of Part 48 there, already.

16          But you have a new miner; you have an experienced  
17      miner. And we're also talking about a newly hired,  
18      experienced miner. So you might be talking about three  
19      definitions.

20          And how should those terms be defined? And I  
21      really don't have a problem with the way that it was defined  
22      earlier or the way that, apparently, the similar way that  
23      National Stone Association and the coalition that they put  
24      together on approaching this proposed rule, I don't have a  
25      problem with the way, you know, the definitions are coming

1     about.

2                 It talks about the new miners' training, and  
3     getting into the various subjects of instruction: of  
4     miners' and their representatives' rights under the Act; the  
5     use of respiratory devices and so forth, where appropriate;  
6     hazard recognition; emergency procedures; electrical  
7     hazards; first aid; walk-around; and so forth.

8                 The question becomes, which of these subjects  
9     should be taught before new miner is assigned work? And  
10    also, within Part 48, when it talks about eight hours  
11    initial training, and then the rest of it may be scattered  
12    over a period of 60 days, there's a segment of training  
13    there that most mines should be familiar with. The  
14    inspectors are certainly familiar with that.

15                And speaking on the subject of familiarity, I  
16    have a copy of the National Stone Association's proposal to  
17    work with MSHA on the regulations.

18                And I appreciate also, there was a cover letter  
19    with that, inviting me to attend a meeting tomorrow, in  
20    D.C., with that coalition, to see what could be added to or  
21    deleted from or modified within their current proposal for  
22    improvement.

23                And I gracefully bowed out of the meeting, on the  
24    basis that that particular proposal, right now, is really,  
25    in our opinion, very thin. And its agenda, set by the

1 industry, which is, to a degree, appropriate, but --

2 The inspectors, in getting back to the issue of  
3 familiarity, they have a Part 48 that applies to underground  
4 mining, and it's laid out in a certain segment of things.

5 And they have the surface regulations for the  
6 surface operations or surface operations of underground  
7 mines in that segment of training. And it somewhat follows  
8 suit.

9 And I think Part 46 should also follow suit,  
10 there, for some rhyme and reason.

11 And you could take the Part 48 right now, and the  
12 segment that it's being drawn from, and begin to strike many  
13 items within the current regulation that would not apply to  
14 the sand, gravel, stone and the colloidal phosphate, and so  
15 forth. Obviously, the initial scope would boil down to,  
16 you're talking about these given industries.

17 You would have certain definitions of miner or  
18 experienced miner, and that is basically already laid out  
19 there. To a degree, it may be a little bit expansive there.  
20 That could be looked at to be whittled down.

21 It talks about, this does not include shaft and  
22 slope people. That could be stricken. Under a new scope,  
23 it simply would not apply.

24 So as you would move through the Part 48 regs,  
25 you simply begin to take those segments out that clearly do



1 not apply to the sand, gravel, stone industries.

2 But as you strike, and then make any additions,  
3 per the coalition or sand, gravel, stone industries,  
4 incorporating them within, again, a particular framework  
5 that has already been established. You're not reinventing  
6 the wheel, here.

7 With that said, back to the questions.

8 Should training of inexperienced miners be all at  
9 once or over a period of time?

10 And I think, in the current regulations, that's  
11 already -- I don't see the burden, here, of an eight-hours  
12 initial training, a complete, or semi-complete walk-around,  
13 getting a miner familiar with the operation, pointing out  
14 the hazardous conditions, the means of operations.

15 And the agenda, as far as what is to be looked  
16 at, is already laid out within the regulations.

17 And should it be carried out over a period of  
18 time? Yes. I think it's already laid out, and I think 60  
19 days is appropriate.

20 There should be moderation in all things. I  
21 would agree that, yes, you can't dump 24 hours of training  
22 on an individual. And a brand-new guy on a brand-new site,  
23 we're going to inundate you with information here that, you  
24 know, you're not even familiar with in the first place. And  
25 there's going to be a ton of that escape him.

1                   And I think a third of that could be  
2     accomplished, the eight-hours initial familiarity with the  
3     mining process and the few other items that is already  
4     talked about.

5                   If you talk about scattering the rest of the 16  
6     hours over six months or a year or whatever, I think that  
7     you're leaving moderation go, at that point in time. I  
8     think 60 days to come back full circle with this individual  
9     and give him, you know, his other 16 hours, would be quite  
10    appropriate.

11                  Should this decision be left to the discretion of  
12    the mine operator?

13                  And yes. It should, to the extent that these  
14    time frames, you have eight hours and a balance of 16, and  
15    he could give them these 16, you know, whether it be once a  
16    week or a couple weeks from now, or however he wants, but  
17    it's got to be accomplished in a reasonable amount of time,  
18    not way off down the road to where it's almost forgotten  
19    about.

20                  And what are the advantages or disadvantages of  
21    spreading this over an extended period of time?

22                  And basically, as I previously mentioned, it's a  
23    matter of, you know, if all this timeliness is to the  
24    discretion of the mine operator, without a given, reasonable  
25    limit, at some point in time, and it becomes six months or a

1 year, there's going to be training fall through the cracks,  
2 very little doubt about it.

3 Task training. Should training be required  
4 whenever a miner receives a work assignment that involves  
5 new or unfamiliar tasks?

6 And I think that's almost a rhetorical question.  
7 It's almost ignorance to give a guy a -- you know, there's a  
8 \$150,000 loader. I know you've never seen one before, but  
9 go get on it. We need some gravel over there.

10 It would be irresponsible, I think, for anyone to  
11 even have to wonder about that question.

12 The annual refresher training. Should specific  
13 subjects be covered during annual refresher training?

14 And I believe, yes. And I think they should  
15 follow suit, again, with what is already established in  
16 Part 48. It gives the issue, and it gives one brief  
17 statement thereafter, to give some guidance to what is to be  
18 discussed on that subject.

19 So where it says, what subject areas should be  
20 included, I think they're already included.

21 Can the eight hours be completed in segments of  
22 less than 30 minutes?

23 And I guess, you know. Yes, it could. Is it  
24 efficient? I don't believe so. I think a minimum amount of  
25 30 minutes, applied to new miners' training, annual

1 refresher training, or whatever the approach might be, is  
2 something you can get a handle on.

3 If you have a situation where it's left solely to  
4 the discretion of the mine operator -- and, at times, that  
5 boils down to sole discretion of the supervisor on the  
6 floor, how he wants to handle this situation, and he says,  
7 You're going to get five minutes at our tail-gate meeting  
8 today and, at the end of the week, here, I'm going to be  
9 giving a ten-minute talk --

10 My question would be to the industry -- and maybe  
11 they're prepared to answer it; I don't know -- but how do  
12 you show that this training was given, in these types of  
13 approaches and segments, other than just jotting down notes  
14 that, you know, I gave Joe, Bill, John, and so forth five  
15 minutes, and that's five minutes out of the eight hours, and  
16 I'll subtract it, and they get seven hours and 55 minutes?

17 And industry continuously screams about record  
18 keeping. How do they assure the agency, how do they assure  
19 miners' representatives out in those various operations  
20 where there is miners' representatives, that this training  
21 is, in fact, being applied, without having mounds of five-  
22 minute and ten-minute talks, and records about those five-  
23 minute and ten-minute talks?

24 I think it's something that really is detrimental  
25 to the purpose. And at least a minimum of 30 minutes is

1 something that can be grasped, people can be gathered in  
2 groups on those issues, and go from there.

3 So my answer to the question is, if it should  
4 read, Should the eight-hours annual refresher be completed  
5 in segments of less than 30 minutes, my answer would be, no,  
6 to that, that they should be a minimum of 30-minute  
7 segments.

8 Training certificates. And I would agree, in the  
9 sand, gravel, stone industries and the other additional  
10 industries that we're talking of here, that there is some  
11 multiple sites. There is some problem about control of  
12 those records, in many cases.

13 For immediate review by an inspector, I think  
14 it's appropriate that the last set of training certificates  
15 for any individual should be at least kept at the mine.

16 If the other two years' worth or so forth, that  
17 the Part 48 refers to, they want to keep them somewhere  
18 else, but it would be handy, then, all of those certificates  
19 would be handy, then, within 24 hours notice or whatever, to  
20 be brought forward.

21 And I think that would be -- 48 or whatever --  
22 but they would be accessible.

23 Qualifications of instructors. And I believe,  
24 yes. They should be qualified.

25 And do they have to be qualified and certified by

1 MSHA, or a State university, or this that or the other?

2 That is something that we are -- steel workers are in review  
3 of, at this point in time, as to what minimum qualifications  
4 are we talking about here.

5 Yes. There has to be minimum qualifications.  
6 And it would be -- if you just say, we've got a competent  
7 person out there that's, you know, he's run a loader, so  
8 he's doing some training on --

9 Right now, the industry, for those that the  
10 training regulations do apply to, is, by and large,  
11 protected.

12 If you have an accident, or a fatality, or an  
13 injury, or whatever, and it becomes a citation issue, and it  
14 becomes a contested citation issue, and then training  
15 records are brought forward about the qualifications of this  
16 individual that had done the training, and you say, the  
17 district manager certified him, this college certified him,  
18 it was accepted and so forth.

19 If you don't have some sort of minimum  
20 requirements, someone to say, Yes, you are an instructor,  
21 and you have these attorneys that play ball here in hearing  
22 rooms and courtrooms will get in there and beat that  
23 industry man to death on the issue of, are you -- do you  
24 think you're -- show us your qualifications.

25 Within the regs, no. We don't ask for it. But

1 we just want to know. Where did you get your  
2 qualifications? Well, I've been on the job for a long time,  
3 Joe.

4 I mean, there has to be some sort of minimum  
5 standards there.

6 Over and above that somewhat, and to reiterate, I  
7 think the initial Part 48, where it runs from 48,21 through  
8 48,32, I believe it is -- yes -- should still be used as  
9 MSHA's own guidelines, and begin to initially strike those  
10 things, right within the segments of where their written,  
11 that does not apply to sand, gravel, stone, whatsoever.

12 And there's many, many parts. There's not so  
13 many, many now that reduces it down to what the National  
14 Stone Association and its coalition has put together,  
15 because if you boil this down to a 30 CFR page booklet in  
16 the type print that is in 30 CFR, it may make one page of  
17 training regulations for sand, gravel, stone miners.

18 And by and large, I think that many operators  
19 would say, In that one page is my Bible. This is what I  
20 train by, so, therefore, what else do I need? You know.

21 So I think there's many important things here  
22 that need to be retained. MSHA already has its agenda. It  
23 should continue to follow that agenda, for consistency, for  
24 its inspectors, for its agency, for those that already  
25 understand Part 48 regs, and adjust those to where they

1 would fit Part 46, and so forth.

2 One other area that we're studying, also, very  
3 significantly, is in regard to these training plans and  
4 whether they should be submitted for approval.

5 Now, there has to be some -- to say a manager is  
6 going to -- you know, you have to file this plan, and it's  
7 got to be reviewed, and then it's got to go back, and if he  
8 doesn't like it, he's going to shuffle it around. And you  
9 have to do this. And then the district manager is law and  
10 gospel on whatever comes down, as to what that training plan  
11 might be.

12 I don't know as it should continue in that vein,  
13 under Part 48,23, that we're drawing from right here.

14 But there has to be some rhyme and reason,  
15 something that, when you come in and ask an operator for a  
16 plan, Well, here's my plan, and no matter how frivolous it  
17 is, that is his plan, and the inspector has to buy that and  
18 accept that and eat that, if there's no regulations on an  
19 approved plan of some sort.

20 Just to drop back a moment, on the issue of  
21 definitions. And on the definitions, it talks about normal  
22 working hours. And initially, MSHA has even -- because of  
23 Part 115, it talks about normal working hours and that  
24 training can be given, if it's a practice, outside, on sixth  
25 and seventh day, or so forth.



1                   And then, on over into the issue of normal  
2     working hours, then it talks of the compensation for the  
3     training program.

4                   And either conveniently, or inconveniently, or  
5     whatever, the Coalition of Sand, Gravel, Stone left out the  
6     issue about the training program or any compensation for  
7     training program.

8                   And they can, you know, tell a guy, You've got to  
9     stay overtime here if you want -- we've got to do this, and  
10    you're going to stay overtime. No. You don't get paid for  
11    this. You're not shoveling right now. Yes. You've got to  
12    come in on Saturday. No. It's not our practice. No.  
13    You're not going to get time-and-a-half.

14                  So it's not addressed by the association. I just  
15    want to bring to the agency's attention, this is the  
16    definition, and in the follow-up on this information, has to  
17    be retained in the standards. And I had it here.

18                  And I had mentioned, also, about the various  
19    things you could go through and chop out of 48, and so  
20    forth. And even though it goes without saying, it is a  
21    reminder, if you leave within there, you know, when MSHA  
22    begins to talk about -- finally has a proposed rule on it,  
23    and they're talking about records of training.

24                  And there's also a provision in there, just as a  
25    reminder, false certification that training was given shall

1 be punishable under Section 110(f) of the Act. And I think  
2 that reminder should remain within that.

3 You know, you can't treat this in a manner  
4 that -- even though it's been reduced quite a bit --  
5 somewhat from underground miners', surface of underground  
6 miners, and so forth, even though you have quite a reduction  
7 of requirements here, falsifications can still put you in  
8 the back.

9 With that, that, at this point in time, concludes  
10 my remarks. I'd like to also reserve any time, if there's  
11 speakers later on, and if there's some positions taken that  
12 the steel workers might would take exception to, we might  
13 like to speak back on that issue, at the end of the day, or  
14 whatever.

15 CHAIRPERSON ALEJANDRO: That would be fine.

16 Mr. Tuggle, I've got a couple questions, both  
17 requests and questions.

18 You indicated that you thought that, you know, a  
19 good guideline for the agency would be to take Part 48 and  
20 go through and pick out those things that would be  
21 appropriate for this particular training regulation.

22 It would be a great help to us, actually, if you  
23 could provide us with what you think some of those things  
24 might be, I mean, at some later time, in writing, if you  
25 could. I mean, it's not and -- obviously, you know, you

1 don't have to if you don't want to.

2 MR. TUGGLE: In answer to your comment on that,  
3 or question on that, it is our intent to develop a Part 46,  
4 as we believe it should read, from Part 48.

5 CHAIRPERSON ALEJANDRO: All right.

6 MR. TUGGLE: And we will be submitting that to  
7 you before your close on comments period.

8 CHAIRPERSON ALEJANDRO: Okay. Great. That would  
9 be great.

10 As far as the small increments, less than 30  
11 minutes of training, you indicated that you didn't think  
12 that that was a good idea.

13 Now, if, in fact, operators were to keep records  
14 of those small bits of training, even five minutes or ten  
15 minutes, would you still have a problem with it, or do you  
16 think that training of short duration like that is not  
17 effective, or subject to abuse, or --

18 MR. TUGGLE: I don't know as it would be a matter  
19 of being abused. It would be a matter that -- from a  
20 supervisor's perspective -- and I've never been a  
21 supervisor; I have worked in a mine for many years, but not  
22 as a supervisor.

23 But to me, if the mine operator tells him, you  
24 know, You've got to keep these records and do this, you're  
25 going to drive this guy nuts about just maintaining five-

1 and ten-minute records.

2 And industry -- whether you're talking about Part  
3 48 or any other part of the 30 CFR, continuously, industry  
4 has screamed about record keeping. It's a burden. It's  
5 eating us alive.

6 And I think if you reduce that down to these  
7 little increments and segments, I think the supervisors that  
8 have to implement would agree with that very issue, that  
9 it's going to eat them alive, to the extent that, after a  
10 while, Jesus Christ, you know, I'm not going to do this this  
11 time or that time. Things are going to go through the  
12 cracks.

13 If you put at least on a minimum of 30 minutes,  
14 you know, people are gathered on that issue.

15 If you give a tail-gate meeting of five minutes  
16 here, and a tail-gate meeting of five minutes there, for  
17 various departments, various --

18 As each supervisor does his thing, then you've  
19 got to collect all what the supervisors have done and  
20 explain to somebody -- hopefully the agency would be asking,  
21 Where's the records that this training was given, find me  
22 eight or eight refresher, or 24 and an eight refresher,  
23 whatever it may be.

24 And all these things, notes, scribblings,  
25 everything else, has to be gathered and make some semblance

1 of order or sense out of it.

2 And I think it's detrimental. Maybe the  
3 industry, you know, thinks, Well, we can get around it. We  
4 have no problem with it. I don't see it. From a common  
5 sense perspective, I just don't see it.

6 CHAIRPERSON ALEJANDRO: Okay. You also indicated  
7 that the steel workers were in the process of reviewing what  
8 appropriate minimum qualifications might be for people who  
9 provide instruction. Is that also going to be included as  
10 part of your recommendations, sir?

11 MR. TUGGLE: Yes, it is.

12 CHAIRPERSON ALEJANDRO: Okay. And also, you  
13 indicated that you weren't sure that the Part 48 scheme for  
14 MSHA approval was necessarily the approach that we might  
15 take here, but are you going to make some recommendations  
16 for how that might work?

17 MR. TUGGLE: Yes. We studying that. And again,  
18 conveniently, you know, out of the coalition's proposal, at  
19 this point in time, that whole segment is basically left  
20 out, other than maybe one sentence or so forth.

21 CHAIRPERSON ALEJANDRO: Yes. I think it says  
22 that if it complies with 115, then it would be considered to  
23 be approved.

24 MR. TUGGLE. Right. So they're doing, basically,  
25 away with 2-1/2 pages of regulations on training plans and

1 type of submission, filed information required, so forth.  
2 And I would agree. I think, in review of that, for this  
3 particular industry, that that approach is burdensome.

4 At the same time, there has to be a handle on  
5 that. And we are reviewing how might be the most receptive  
6 approach to maintaining a handle about some sort of plan  
7 being there, whether it's got to have to have the rubber  
8 stamping, of, you know, the President -- well, not the  
9 President of the United States -- Secretary of Labor; we'll  
10 let him stamp it --

11 CHAIRPERSON ALEJANDRO: We've have a big backlog  
12 if --

13 MR. TUGGLE: But, I don't know, you know.  
14 There's got to be some method here. We are reviewing a few  
15 of those, and I don't want to throw those few out to where  
16 we're grappling and may take one, and MSHA may hang its hat  
17 on another.

18 So we're boiling some things down on that. And  
19 we hope it would be, at some point in time, acceptable to  
20 the industry.

21 CHAIRPERSON ALEJANDRO: Okay. That's all I have.  
22 Does anyone else have any?

23 MR. BRELAND: Just a follow-up on -- You talked  
24 earlier about maybe the last record being made available at  
25 the mining site, for training.

1                   Did you mean just the annual refresher or the  
2                   past training records, or -- I'm not sure I totally  
3                   understood which records you were talking about.

4                   MR. TUGGLE: Yes. If you have a new miner and  
5                   he's being given his 24-hours initial training, as we  
6                   propose, and as is already established, within a 60-day  
7                   period, his next record will be his annual refresher  
8                   training.

9                   Once he has an annual refresher training, that  
10                  main record can go back to the headquarters or wherever they  
11                  retain them or whatever. Once he has completed an eight-  
12                  hour refresher training, and he then completes his second  
13                  one, as long as that last one remains at the mine site, all  
14                  the others become compiled.

15                  And then again, in some of the current  
16                  regulations it says, at the point in time he leaves  
17                  employment, he's privileged to a copy of all of his training  
18                  records, so he could take it to another mine or whatever.

19                  MR. BRELAND: Okay. I thought that's what you  
20                  meant, but I just wanted to make sure.

21                  And then, when you talked about the approval  
22                  process for both the instructor and the training plans -- I  
23                  think you answered it, when you talked to Kathy a minute  
24                  ago -- that if there was some sort of plan or outline they  
25                  followed, that might be acceptable, as long as that plan

1       itself was.

2                   But the other was the approval for instructors.  
3       Are you saying, if the definition was appropriate for what  
4       made a qualified person or competent person, that that might  
5       be an acceptable method of designating --

6                   MR. TUGGLE:   At face value, the competent person  
7       definition and the approach to a competent person seems  
8       realistic.

9                   But at the point in time, as I explained about,  
10      when there's situations -- and they will come about -- of  
11      the agency and a given company, and possibly a given Union  
12      in the middle of it, doing battle in hearings and contested  
13      citations, based on possible injuries or fatalities, in  
14      regard to safety and health training issues.

15                  And someone says, Well, he's my designated  
16      competent person.   He's, you know, run that loader for a  
17      long time.   Because someone has run a loader for a long  
18      time, doesn't make him a competent trainer.   They may be  
19      competent to get 11 yards in a 10-yard bucket and haul it  
20      for you, but can they train people sufficiently, in regard  
21      to safety and health on the job?

22                  And there has to be, I think, a little more than  
23      an explanation of a competent person.   And it may not  
24      necessarily -- this is one of the issues that's still under  
25      review -- this may not necessarily go to the extent of



1 saying he has to be given the royal touch of the wand by the  
2 district manager to meet this certification.

3 But there has to be -- we're sure there's  
4 something in between that -- and even industry might have  
5 some ideas on it, of expanding more than just the competent  
6 person approach, and not going to the extent of saying, you  
7 know, it has to be blessed by MSHA, district manager, some  
8 college professor, or whatever.

9 Hopefully I answered your question.

10 MR. BRELAND: Yes. You did.

11 CHAIRPERSON ALEJANDRO: Essentially what you're  
12 saying is you don't think that the Part 48 approach  
13 necessarily gets you to where you want to go.

14 MR. TUGGLE: Well, I think that, again, this is  
15 one of the items that could be, even though it would be left  
16 in its framework and context of the Part 48 that's already  
17 established, that part in regard to approval of a trainer  
18 and so forth could be narrowed down, not narrowed down yet,  
19 in our opinion, to the extent of the industry simply saying,  
20 We've got a competent person; he's our trainer.

21 Because that very issue will eat him alive if  
22 somebody winds up dead.

23 MR. BRELAND: It could be that they somehow have  
24 the background to show competency, but also some  
25 demonstration that they're qualified to teach, is what

1       you're saying.

2                   MR. TUGGLE:   Right.

3                   MR. BRELAND:   Somehow.   Some fashion.

4                   MR TUGGLE:   Some form or fashion.

5                   MR. BRELAND:   Okay.   Thank you.

6                   MR. BURNS:   Yes.   On the new amount of training,  
7       is the eight hours that you talked about before that could  
8       work, is that -- do you see that to be a hard and fast  
9       number, or could that depend upon the mine and the new  
10      miner?

11                   Say, perhaps someone that's got a lot of  
12      experience in construction and comes to work at a small sand  
13      and gravel mine, would it be conceivable that that person  
14      may not require the eight hours before they could perform a  
15      task that they already know how to do?

16                   MR. TUGGLE:   If you're a construction worker --  
17      well, that might be all of them -- if you're an electrician,  
18      you can do electrical work, whether you're in a hinge  
19      factory or whether you're in a mine.   But it's going to take  
20      time to familiarize that individual with that mine.

21                   I think -- so you're not going -- if you hire an  
22      electrician, you're not going to come in and teach him  
23      electrical profession.

24                   You're teaching him everything around the issues  
25      of electrical profession, and they're already spelled out

1     within 115; and when you talk about some task training, some  
2     hazard training, some speed controls around mines, the  
3     various equipment that's being run, what to watch out for  
4     here, the process, the conveyor systems from one process  
5     into another process, a walk-around tour of most mines.

6             And that information being fed in and even  
7     reiterated, maybe two or three times, over the period of  
8     that day, of getting into this area and, basically, having  
9     to say some of the very same things that you've said over  
10    here.

11            In short, on your question, I think eight hours  
12    is -- should be a hard and fast rule.

13            MR. BURNS: Okay. That's really what I wanted to  
14    know. Okay.

15            MR. TUGGLE: Eight hours minimum. And then,  
16    again, like the regs read, the balance in a 60-day time  
17    frame, at the operator's discretion.

18            CHAIRPERSON ALEJANDRO: Does anybody else have  
19    any questions? Okay. Thank you very much, Mr. Tuggle.

20            MR. TUGGLE: Okay. Thank you.

21            CHAIRPERSON ALEJANDRO: Is Ken Pike from Montana  
22    Limestone here?

23            All right. Is there anyone else here who has not  
24    signed up who would like to speak?

25            MR. YORK-FEIRN: Good morning. My name is Bill

1 York-Feirn; Y-O-R-K - F-E-I-R-N. And I'm a program  
2 administrator with the Colorado Division of Minerals and  
3 Geology, Mine Safety and Training program.

4 And I'm wearing a couple of hats today. The  
5 first one is a comment I'd like to make on behalf of a group  
6 of small mine operators in southwest Colorado.

7 We had some discussions, over the last few weeks.  
8 And what they wanted to put forward was, a large number of  
9 small miners -- there are a large number across the country,  
10 at least 350 small mines in Colorado, and probably more,  
11 based on our permitting records, actually. Those are MSHA  
12 figures.

13 The work force at small operations is often very  
14 transient. Miners working for weeks or months is very  
15 common.

16 It is onerous for them to complete an eight or  
17 even 24 hours of training before they begin work on an  
18 assigned task. They simply find themselves not doing it.  
19 And that, in fact, is going to be more of a safety concern  
20 than maybe another alternative to the eight hours of initial  
21 training.

22 This group of small miners requests that work can  
23 be assigned after either a smaller amount of training, as  
24 required, possibly site-specific hazard training and, of  
25 course, task training, before that particular miner can

1 start work on the site.

2 They request a provision that provides a variance  
3 or an exclusion of the eight-hour requirement for small mine  
4 operations, possibly based on the size of the operation or  
5 the number of miners employed at the operation.

6 That's really all I had to say on that issue, for  
7 the small miner group.

8 CHAIRPERSON ALEJANDRO: You're talking about the  
9 eight hours of initial training of the total 24 hours?  
10 You're not talking about the annual refresher training?

11 MR. YORK-FEIRN: No. I'm talking about the  
12 initial training, when they first come on to the mine site.

13 CHAIRPERSON ALEJANDRO: Okay. Do they -- is  
14 there any alternate suggestion? You're saying eight hours  
15 is too much. I mean, is there -- does the amount depend on  
16 the size of the operation, that would be appropriate or --

17 MR. YORK-FEIRN: Yes. I think it depends on the  
18 size of the operation and how, you know, their work duties  
19 are, or where they'll be working on-site.

20 You know, they could be working at a small load-  
21 out or stockpile area, away from all of the mining activity,  
22 or they could be within the mining area, too, of that  
23 operation.

24 But I think the concern is that they have a much  
25 reduced amount of training required, so that they can get

1     those people to work as soon as possible.

2                   CHAIRPERSON ALEJANDRO:   You're talking, reduced  
3     amount, initially.   Does that mean they understand that the  
4     24 hours of new miner training is something that is required  
5     by the Mine Act, and it would not be possible, even if we  
6     were inclined to do so, to require less than that in  
7     whatever regulation we were to come up with?

8                   MR. YORK-FEIRN:   I think their dilemma is they do  
9     have people that are there for a week, two weeks.   And for  
10    them to plan for 24 hours training is a concern for them.

11                   CHAIRPERSON ALEJANDRO:   Do these people typically  
12    stay within the mining industry and move from location to  
13    location, or do they do other -- I guess what I'm getting at  
14    is, if, in fact, there was some mechanism to keep track of  
15    the training that they received and, at some point, they  
16    would get, you know, their 24 hours and have some kind of  
17    record of that.

18                   Is that the situation, or are these people moving  
19    in and out of the mining industry?

20                   MR. YORK-FEIRN:   You know, I think it's quite a  
21    variety.   I think, often, there are many that go from mine  
22    to mine.   I think it's also, from what they have told me, is  
23    there are a lot of people, you know, come and have to make a  
24    house payment or car payment, and they work for a few weeks,  
25    a month or something, and they're gone.

1                   CHAIRPERSON ALEJANDRO: Right.

2                   MR. YORK-FEIRN: So they kind of have this  
3 revolving door of employees. And admittedly, it's not the  
4 best situation, but oftentimes, that's the work force that's  
5 available.

6                   So they're having a hard time spending that time  
7 for each one of those employees, doing that training.

8                   CHAIRPERSON ALEJANDRO: Is it possible for you to  
9 give us some idea of what the average number of workers is  
10 at the mines that you're speaking on behalf of? I mean, is  
11 it a handful of employees, or also, does it vary?

12                  MR. YORK-FEIRN: You know, I'd have to guess  
13 maybe around 100 or so employees.

14                  CHAIRPERSON ALEJANDRO: At each operation?

15                  MR. YORK-FEIRN: Aggregate, altogether, for these  
16 particular mining companies.

17                  CHAIRPERSON ALEJANDRO: Okay. 100 employees at  
18 350 operations?

19                  MR. YORK-FEIRN: Right. Well, no. No.

20                  I guess I didn't understand the question.

21                  CHAIRPERSON ALEJANDRO: Yes. I guess what I was  
22 looking at -- I mean, you say that you're speaking on behalf  
23 of small mine operators. And I was trying to get some sense  
24 of, you know, what the average number of people would be,  
25 working at a typical operation that you're talking about.

1 MR. YORK-FEIRN: Oh, a typical --

2 CHAIRPERSON ALEJANDRO: Yes.

3 MR. YORK-FEIRN: Statewide.

4 CHAIRPERSON ALEJANDRO: Or does it vary so  
5 much --

6 MR. BURNS: Or maybe even just a range.

7 CHAIRPERSON ALEJANDRO: Yes.

8 MR. BURNS: Is a range a better question?

9 MR. YORK-FEIRN: I think, within this group,  
10 let's say, I think it was probably anywhere from two to  
11 about 35.

12 CHAIRPERSON ALEJANDRO: Okay.

13 MR. YORK-FEIRN: Statewide, you know, we've kind  
14 of used the guidelines that MSHA has, you know, the one to  
15 49. We kind of group into the small miner category. So,  
16 yes. Between one and 50, probably.

17 CHAIRPERSON ALEJANDRO: Okay. And again, I don't  
18 want to put you on the spot, but are any of these operators  
19 currently providing Part 48, or -- I mean maybe not  
20 strictly --

21 MR. YORK-FEIRN: Many are. Yes, they are.  
22 They're trying, kind of desperately, to keep up with it.

23 CHAIRPERSON ALEJANDRO: Right.

24 MR. YORK-FEIRN: And most of them are doing  
25 pretty well.



1                   CHAIRPERSON ALEJANDRO:   Okay.

2                   MR. YORK-FEIRN:   But when they get these one- and  
3   two-week kind of things, I think it slips through the  
4   cracks.

5                   CHAIRPERSON ALEJANDRO:   Okay.   Do you have any  
6   questions?

7                   MR. BRELAND:   On the proposal for variances, as  
8   Kathy talked about, there was no exception in the Act, but  
9   were you talking about for annual refresher and new hire, or  
10   these repeat employees?

11                  MR. YORK-FEIRN:   Well, I think they're primarily  
12   referring to new miner training, when they come on-site.

13                  MR. BRELAND:   And were they asking for the  
14   variance to mean they didn't have to train at all, or they  
15   wanted to be able to spread that out?

16                  MR. YORK-FEIRN:   They were leaving it open, you  
17   know.   Could it be reduced?   In other words, say if they're  
18   required to have the site-specific hazard training and the  
19   work task training, that maybe they could do in an hour or  
20   two hours, or something less, that would be manageable for  
21   them.

22                  And they didn't have a lot of specific  
23   suggestions on number of hours or exactly what they wanted.  
24   They just wanted to have some kind of allowance for them, to  
25   help them meet those requirements of training, but also, you

1 know, efficiently run their operation, too.

2 CHAIRPERSON ALEJANDRO: Okay. Did you say you  
3 had a question?

4 MR. BURNS: Yes. I'm trying to find where the --  
5 I'll have to come back to it.

6 MR. YORK-FEIRN: Okay.

7 MR. BURNS: Thank you.

8 MR. YORK-FEIRN: You bet.

9 I'd also like to speak on behalf of the Colorado  
10 Division of Minerals and Geology Mine Safety and Training  
11 program.

12 We would support the comments that the Colorado  
13 Rock Products Association presented, and would like to add  
14 to that a bit.

15 CHAIRPERSON ALEJANDRO: Okay.

16 MR. YORK-FEIRN: One thing that we feel is very  
17 important is that any document, including a computer record,  
18 which, at a minimum, contains the same information as Form  
19 MSHA 5023, would be hereby approved.

20 We feel that the paperwork burden of the 5023  
21 forms is really onerous and outdated.

22 We'd like to see some easier way of making sure  
23 that everybody is accounted for and their training in  
24 documented in the proper way, consistent with MSHA's  
25 requirements, but some flexibility in, you know, doing that,

1 in sort of a group way, so that we aren't trying to find  
2 pieces of paper and file them, and losing track.

3 I would also like to add -- and I believe these  
4 are in the coalition's proposed training regulations -- but  
5 I would like to support their requirements for comprehensive  
6 training, their definition for comprehensive, 24-hour  
7 training, and also the entire section that talks about  
8 comprehensive training that is not required for the  
9 following groups.

10 And is it appropriate for me to read all this  
11 off, or --

12 CHAIRPERSON ALEJANDRO: Yes. I mean, you can  
13 make whatever comments you wish.

14 MR. YORK-FEIRN: Okay. I haven't seen the latest  
15 draft, but we do like the way this addresses the training of  
16 independent contractors, which has always been a tough thing  
17 for operators.

18 And we see this as a perfect opportunity to try  
19 to clear that up, and also help in terms of the flexibility  
20 for people that are not involved in the extraction, mining,  
21 or milling process.

22 So, with that, I'll go ahead and read that  
23 section.

24 "Comprehensive training means the 24-hour  
25 training requirements for newly hired, inexperienced

1 employees, training requirements for newly hired,  
2 experienced employees, and the eight-hours annual refresher  
3 training requirements.

4 "This training shall be required for all  
5 employees who are engaged in the extraction or production  
6 process, as related to mining and milling, and for employees  
7 who are employed at and normally report to work at the mine  
8 site to perform maintenance or service work on extraction or  
9 production machinery.

10 "Independent contractors who perform extraction,  
11 mining, or milling shall provide the comprehensive training  
12 and retraining that is required for their employees."

13 And that is a switch, in that that responsibility  
14 is moved to the contractor rather than, necessarily, to the  
15 operator.

16 "If an independent contractor operates all or  
17 part of a mine or milling equipment, and has employees who  
18 are employed at and normally report to work at the mine site  
19 on a regular basis to service or maintain that equipment,  
20 the independent contractor shall provide comprehensive  
21 training for those affected employees."

22 And then it goes on to say, "Comprehensive  
23 training is not required for: 1) construction workers and  
24 shaft and slope workers.

25 "These persons shall have site-specific hazard

1 training when first assigned to work on the construction  
2 site involved in the construction of shaft or slope workers,  
3 and must provide training that addresses the safety and  
4 health hazards of the task assigned and all other required  
5 training."

6 Number 2 is, "Independent" -- I can't read  
7 that -- "independent contractors for" -- well, shoot, I  
8 can't read that very well -- "personnel who enter the  
9 property to service, maintain, construct mine or extraction  
10 or production or machinery, these personnel shall have site-  
11 specific hazard training when first assigned work on mine  
12 property.

13 "It is the responsibility of the independent  
14 contractors to provide training that addresses the safety  
15 and health hazards of the tasks assigned to these workers  
16 and all other required training."

17 Number 3, "Any delivery office or scientific  
18 worker, customer truck driver, or transport driver, or staff  
19 or administrative personnel not engaged in extraction or  
20 production activities as related to mining or milling, these  
21 persons shall receive site-specific hazard training."

22 Number 4, "Outside vendors, visitors, office  
23 personnel, or staff personnel from company offices who do  
24 not work at the mine site on a continuing basis or who are  
25 accompanied by someone familiar with hazards specific to the

1 mine site."

2 And D, "Hazard training means site-specific  
3 information or instructions that are provided to warn of  
4 mine hazards such as traffic patterns, restricted areas,  
5 warning and evacuation signals, emergency procedures, and  
6 other specific safety procedures the mine operator requires  
7 for visitors, customers, contractors, vendors, office or  
8 staff personnel.

9 "Hazard training requirements shall be satisfied  
10 by issuance of written hazard warnings, verbal information,  
11 use of signs and posted warnings, walk-around training, or  
12 by being accompanied by someone familiar with hazards  
13 specific to the mine site."

14 CHAIRPERSON ALEJANDRO: Okay.

15 MR. YORK-FEIRN: And just one other comment, also  
16 on behalf of the Mine Safety and Training program, the  
17 definition of competent person -- and kind of piggy-back on  
18 the previous fellow's comments.

19 If a competent person can conduct training, we  
20 would request that MSHA require some kind of condensed and  
21 structured training for the competent person performing  
22 safety training on-site.

23 Often that person is presenting the training  
24 rather than developing the training. This person may not  
25 have the broad knowledge of MSHA regulations and miners'

1 rights necessary to teach, say, the eight-hour annual  
2 refresher training course.

3 And therefore, we believe the definition of a  
4 competent person must be carefully thought out. We do  
5 support, however, the flexibility to use instructors other  
6 than MSHA certified instructors.

7 And that's all I have.

8 CHAIRPERSON ALEJANDRO: Okay. Do you have any  
9 questions?

10 MR. BURNS: Yes. I was just going back to your  
11 previous comments about the small mines and how much  
12 training should be required before someone does the work.

13 Under the current Part 48,25(a), it states,  
14 Provided that no less than eight hours of training shall, in  
15 all cases, be given to new miners before they are assigned  
16 to work.

17 And it states, The following courses shall be  
18 included in the eight hours of training: introduction to  
19 work environment; hazard recognition; and health aspects of  
20 the tasks assigned to the new miner.

21 Now, are you saying that, in some of the mines  
22 that you're talking about, it does not take eight hours to  
23 do that?

24 MR. YORK-FEIRN: Well, yes.

25 MR. BURNS: Okay. Versus that they just don't

1 want to do eight hours?

2 MR. YORK-FEIRN: No. It -- right.

3 MR. BURNS: I mean, there's a distinction there.

4 MR. YORK-FEIRN: Yes. There are two things. I  
5 think one is that it doesn't take them eight hours to do  
6 that, for sure.

7 But the other is that they feel like they could  
8 cover that in a much shorter amount of time and get them to  
9 work faster.

10 MR. BURNS: Could you ask some of the operators  
11 that you're talking about to try to put down on paper what  
12 they consider that to be, and how they would do that, just  
13 to give us a ballpark on how they come up with how much time  
14 it would take?

15 MR. YORK-FEIRN: I could do that.

16 MR. BURNS: Okay.

17 MR. YORK-FEIRN: You know, request them and have  
18 them submit comments.

19 CHAIRPERSON ALEJANDRO: Are --

20 MR. BURNS: They can submit it through you, if  
21 you want.

22 MR. YORK-FEIRN: Okay. Sure.

23 CHAIRPERSON ALEJANDRO: Yes. We can give you an  
24 address, if you don't already have it.

25 CHAIRPERSON ALEJANDRO: My question was, are any



1 of the operators that you're speaking for asking that they  
2 not be required to give any kind or any part of that initial  
3 training before the miners start to work?

4 MR. YORK-FEIRN: Well, there was some opinion,  
5 you know, that, gee, it would be nice just to put them to  
6 work.

7 CHAIRPERSON ALEJANDRO: Right.

8 MR. YORK-FEIRN: But they do, you know,  
9 understand the need to have training, particularly the site-  
10 specific and the task training.

11 CHAIRPERSON ALEJANDRO: Right.

12 MR. YORK-FEIRN: And that's not a problem.  
13 They're not contesting that.

14 CHAIRPERSON ALEJANDRO: But as Kevin said, I  
15 mean, the situation is that you don't -- that may not  
16 require eight hours to get through that material, for that  
17 particular operation.

18 MR. YORK-FEIRN: Right.

19 CHAIRPERSON ALEJANDRO: Okay.

20 MR. YORK-FEIRN: They're usually very small,  
21 often very simple operations that, you know, you can do  
22 fairly quickly, really.

23 MR. BURNS: Yes. But like I said, it would be  
24 very helpful if they could put that on paper, because right  
25 now, we're just talking in abstract.

1 MR. YORK-FEIRN: Okay.

2 MR. BURNS: Thank you.

3 MR. YORK-FEIRN: Thank you.

4 CHAIRPERSON ALEJANDRO: Do you have a question?

5 MS. FONTAINE: I have one question for you. Do  
6 you ever help mine operators to develop training programs?

7 MR. YORK-FEIRN: Yes, we do.

8 MS. FONTAINE: Could you give me a range of costs  
9 for a small business or a large mine?

10 MR. YORK-FEIRN: Cost to --

11 MS. FONTAINE: Establish the program.

12 MR. YORK-FEIRN: The Colorado State program is --  
13 we cannot charge for our services, so we are supported by  
14 Federal and State monies. And so our work that we do in  
15 helping the industry is for free.

16 MS. FONTAINE: Okay.

17 MR. BURNS: Yes. I guess her question is part  
18 of -- you know, one of the legal requirements we have for  
19 rule making is to determine how much it costs an operator to  
20 comply with the standards.

21 Would you have any sort of estimate? I know  
22 you're funded separately, but have you guys ever come up  
23 with any kind of estimate as to what it would actually cost  
24 to do this service for a mine operator?

25 MR. YORK-FEIRN: We could probably put something

1 together.

2 MR. BURNS: Okay.

3 MR. YORK-FEIRN: I can't say we have.

4 MR. BURNS: Okay.

5 MR. YORK-FEIRN: And are you interested in cost  
6 to assist all miners, or small miners, or --

7 CHAIRPERSON ALEJANDRO: A range, probably.

8 MR. BURNS: I guess, are you looking at a range  
9 of a size of a mine, what it would cost to set up a program  
10 for them.

11 CHAIRPERSON ALEJANDRO: I mean, it would be  
12 whatever you would have, you know, specific knowledge of.  
13 You know, every bit of information we can get is helpful.

14 MR. YORK-FEIRN: Okay. And you're essentially  
15 talking about a safety program, and not necessarily doing  
16 training for them?

17 CHAIRPERSON ALEJANDRO: Well, we are specifically  
18 talking about the training program.

19 MR. YORK-FEIRN: Okay.

20 CHAIRPERSON ALEJANDRO: I mean, essentially, what  
21 we're looking for is, you know, assuming certain training  
22 program requirements, you know, how much is this -- how much  
23 are these requirements, these regulations, going to cost the  
24 mining industry to comply with?

25 So if you could give us an idea of, you know, how

1 much it would cost, you know, an operator of a certain size  
2 to develop and implement -- if you've got that  
3 information -- a training program for miners, I mean, that  
4 kind of information would be very helpful.

5 MR. YORK-FEIRN: Okay. We can do that.

6 CHAIRPERSON ALEJANDRO: All right. Are there any  
7 other people who would like to speak?

8 I would suggest -- I mean, it's about 9:30 --  
9 that we take a 15-minute break. And then, when we get back,  
10 we can pick up with the additional speakers.

11 (Whereupon, a short recess was taken.)

12 CHAIRPERSON ALEJANDRO: Do we have anyone here  
13 who would like to speak? Yes?

14 MR. SCHAFER: My name is Kelly Schafer, with  
15 Fisher Sand & Gravel. Spelling, S-C-H-A-F-E-R.

16 CHAIRPERSON ALEJANDRO: And what was the name of  
17 your organization?

18 MR. SCHAFER: Fisher Sand & Gravel.

19 CHAIRPERSON ALEJANDRO: Fisher Sand & Gravel.

20 MR. SCHAFER: I guess the first thing is, we  
21 agree with most of what CRPA had proposed earlier. A few  
22 things that we'd like to address, I guess.

23 The new miner training, as far as the 24 hours,  
24 the 16 hours of start-up is reasonable.

25 The problem that I see, I guess, and I'm

1 surprised that no other sand and gravel or smaller industry  
2 hasn't addressed yet, first of all, the place to provide it.  
3 Most of these people are going to hire it out, and to send a  
4 person in to get this training. Most places aren't going to  
5 want to train one person.

6 And in the sand and gravel industry, when you  
7 hire that person, you pretty much need that person at that  
8 point. You're not going to be able to wait three weeks  
9 until someone has got a class of ten or twelve to train  
10 them.

11 As far as that goes, I think that's going to be  
12 one of the hardest problems for us to fit to, at least, you  
13 know, the 16- or 24-hour.

14 And then, with that, I think there should be a  
15 chance of doing a six months to finish the training, within  
16 the 24 hours.

17 I believe if you brought the person in and could  
18 train them with the 16 hours within, say, a 30-day period,  
19 and do an introduction to hazard and job site, and having a  
20 foreman or an experienced employee overseeing that person  
21 for that period of time until you can establish a class size  
22 to make it more affordable for the company, I think that  
23 would be definitely something to consider.

24 Also, the first aid part of it, you know, in the  
25 24 hours part, first of all, I think, to train every

1 employee you have on your job site in first aid and CPR is  
2 probably a little bit overboard.

3 We look at a designated employee on the job site,  
4 at least one per shift. And I think that would be something  
5 to consider.

6 As far as training everybody, we have a lot of  
7 people in the industry that probably aren't able to either  
8 provide the training -- I mean, not so much provide the  
9 training, but provide the service. A lot of people  
10 aren't -- as far as education, as far as the remembering  
11 part of it, a lot of people won't even address doing it.

12 So to train everybody -- you know, to spend eight  
13 hours of training that person, to me, is an extra burden of  
14 expense. As long as you can provide a person on the job  
15 site that is willing to do it, with that training, I think  
16 to go to 24 hours is an overkill.

17 I think, you know, if you could do an eight to a  
18 16, I think that would be adequate, as long as you're  
19 covering the problems you have in your mine site and  
20 covering, you know, the designated training needed, as far  
21 as -- and we can follow with the Part 48, like I said.

22 And I don't think that within six months is out  
23 of line to ask for that. You know, a prestart-up for an  
24 employee to come to work right off the bat, maybe it's going  
25 to be a two-hour approach.

1           Maybe a person needs to learn about lock-out/tag-  
2 out, the hazards of the mine, and you know, what kind of  
3 personal protective equipment, the hazard communication.  
4 Then we should be able to turn them loose.

5           I think overwhelming them with 24 hours of  
6 training before they even come to work, as Colorado Rock  
7 Products said earlier, the attention span -- and I don't  
8 know how many people in the classroom have ever trained a  
9 class before.

10           But you get them going in the morning, and  
11 somewhere between an hour-and-a-half to two hours in there,  
12 you can see the glaze come over their eyes and they're  
13 thinking about something else.

14           And so, you know, following that up, I also  
15 believe that, you know, the hazard training and giving them,  
16 you know, 30-minute or less intervals throughout the time on  
17 the site, let the person address it, as far as the problems  
18 that are on that mine site, you know, the hazard they're  
19 encountering, I think is something that should be looked at,  
20 definitely, instead of worrying about, you know, following  
21 this set guidelines of training.

22           The next thing, I guess, is probably our biggest  
23 concern, is looking at the training for people that come on  
24 the plant side, as far as the fuel people, the sanitation  
25 people, and the landowners, State employees that are coming

1 out to do the testing of the materials.

2 For us to require a company that's going to  
3 provide us fuel, we'll say, on a job of 20,000 tons that we  
4 can wrap up in one week, to expect them to put their  
5 employee through 24 hours of training to give us fuel on  
6 three times, is not going to happen.

7 The fuel companies and the sanitation companies  
8 are going to tell us we're nuts, or they're going to rack  
9 their price up so high that we're not going to be able to  
10 afford to have them come out for that short a period of  
11 time.

12 And for us, if we could give them a 15-minute  
13 hazard training as far as what they're going to encounter on  
14 the job site, what they should look for on the job site,  
15 make sure they've got their safety protection equipment on,  
16 I don't think that's an outstanding request.

17 To me, those are the things we should be looking  
18 at. You're never going to keep a landowner out of your  
19 site. To expect him, you know, when an MSHA guy is there,  
20 to have 24 hours of training, is just not going to happen.

21 So I definitely think those are something that,  
22 you know, should really be looked at.

23 You know, State employees, the same way. We are  
24 dealing with them on a regular basis. They are out on our  
25 job sites. We have a hard enough time getting them to wear



1     hard hats, you know, and steel-toed shoes.

2                   And for us to get them to train their college  
3     students for the year 24 hours before they come out working  
4     for us is --, you know, like I said, and you're not going to  
5     keep the State employees out of your job site.

6                   So I definitely think those are something we have  
7     to address.

8                   And to require that, you know -- the difference  
9     between us and a coal mine -- and that's what they're  
10    doing -- but they can set up a bid for a whole season. And  
11    these people want their business. They can bid it. They're  
12    coming to the same location all the time.

13                  Like I said, if we're there for one week, and  
14    we're going for a price, we're not going to be able to get  
15    these guys to get their training. They could take them  
16    longer to the training than we're going to need their  
17    services.

18                  And I think that's a really -- I guess I'm not  
19    sure how to state that. But I think that's an over-  
20    assumption for something that we need.

21                  You know, maybe a person could look at something  
22    like the coal mines are doing, that if we don't have  
23    somebody in there working for five consecutive days, you  
24    know, leave that kind of loop hole in there.

25                  If you have somebody that comes in and delivers,

1 and as long as you give them the hazard training, as long as  
2 they're not in there providing a service for five  
3 consecutive days, they wouldn't need the 24 hours of  
4 training or the eight hours of training or annual refresher.  
5 I think that's something we should look at.

6 Let me see. I think that's all on that.

7 Also, we have a real problem with -- well, I  
8 shouldn't say a real problem -- but we set up on the same  
9 locations where we finish crushing all the products on a  
10 plant-mix job, and a coal mine -- not a coal mine -- but a  
11 hot mix plant will come up and set in, you know, right next  
12 door and start feeding out of piles as we're producing. And  
13 also those people are going to be coming across.

14 And those fall under OSHA. And for us to require  
15 them to do the training for MSHA -- and 90 percent of the  
16 time you're going to find that the hot mix company or the  
17 paving companies are going to be the prime and we're going  
18 to be the subcontractor. And you know, we're really going  
19 to have a hard time getting them to provide the training  
20 when we're working for them.

21 The record keeping, as far as in a central  
22 location, right now, I think, when you're looking at  
23 portable plants in the sand and gravel industry, we're  
24 talking, you know, a few pieces of equipment, four or five  
25 guys in the plant site, you know, upward to maybe ten.

1           They already have to provide the MSHA quarterly  
2     reports, the equipment checklists, the emergency phone  
3     numbers, the legal identity report. And then, besides that,  
4     they're looking at the Federal paperwork, the State  
5     paperwork, and worker's comp paperwork they have to already  
6     maintain.

7           For us to maintain training documentation for our  
8     employees on the job site, I think, is excessive. We should  
9     be able to have those at a main location.

10          And if MSHA wants to do an audit like they do on  
11     us already, all they have to do is come to the main office,  
12     or they can request the paperwork from that ID number, and  
13     that can be faxed or sent to them, without us having to  
14     maintain it on the site.

15          Another problem we have with that is we don't  
16     keep the same employees on the same location all the time,  
17     and for us to try and chase that paperwork from one location  
18     to the other is a big burden that, first of all, all I do is  
19     see us receiving a whole lot of citations on something that  
20     can be accomplished by just making a phone call to our  
21     office and us faxing you the information.

22          I think the biggest thing we need to look at is  
23     that the sand and gravel is nowhere close to the coal mine,  
24     for the fact that it's portable. Very few -- I guess there  
25     is a lot of commercial operations, but there is a lot more

1 portable operations that don't stay at the same location all  
2 the time.

3 And to give them more and more burden as far as  
4 paperwork and record maintaining and training requirements  
5 is going to be a lot harder and a lot different for the sand  
6 and gravel industry.

7 Again, on the 30-minute meetings, as far as the  
8 way we do it right now, I provide them an outline for the  
9 whole year, for 52 weeks, and they have a set agenda, what  
10 they have the meeting on. And they also cover the hazards  
11 that's on the job site. That should be considered as part  
12 of the training, whether it falls in the 24-hour or not.

13 To me, that is probably as good or better than  
14 hiring some guy with a couple years of college experience  
15 that grabs a book that has some training plans set up in it,  
16 and all he's doing is standing in front of the thing,  
17 putting overheads on the board and showing a couple movies  
18 and talking about what he thinks, you know, is in that book.

19 The foreman and the employees that are doing this  
20 for a living have a much better understanding about what  
21 they're talking about, and I think they are as adequate, I  
22 mean, within looking at the person's capabilities. I mean,  
23 you're not going to take somebody that has no communication  
24 skills to do this kind of training.

25 But for us to require them to be MSHA certified

1 as a trainer to do different specialized training, I think  
2 is overboard. I think we can do that with looking at the  
3 person's, you know, qualifications as far as the employee.

4 And maybe there needs to be some kind of  
5 guidelines set, but to make the person be certified, I don't  
6 think that qualifies him as a trainer, just because somebody  
7 says he took a class or he's done this.

8 I think there needs to be some hands-on  
9 experience or that person being able to understand what he's  
10 training on.

11 Okay. The other thing I wanted to bring up --  
12 and maybe this isn't the place to do it -- but we have a lot  
13 of small contractors. And I guess I am kind of discouraged  
14 or a little bit -- that we don't have more representation  
15 from the mining industry here, as far as the sand and  
16 gravel.

17 I think the reason for that is I don't think that  
18 it's probably being enforced evenly, as far as the  
19 inspections and everything. A lot of companies don't see  
20 MSHA as a problem, because they probably don't see them on a  
21 regular basis, as far as requiring the notice of mine  
22 operation -- or mine opening.

23 When we start looking at the small mom and pop  
24 operations that have maybe four or five workers and they own  
25 their own little operation, if they're not held under the

1 same standard, that's going to be an undue cost for us,  
2 compared to them, on bidding jobs and working with them.

3 And the excuse that we don't want to cite them  
4 out of operation or a job or a company, to me, says that  
5 these employees aren't worth the value -- or their lives  
6 aren't worth the same value as the lives of our employees.  
7 And I think, you know, all that stuff should be across the  
8 board.

9 And I don't know how we're going to get a lot of  
10 those places to enforce that when they're not even opening  
11 their mine sites, already.

12 The last part, you had asked earlier for kind of  
13 a cost range on the training. And from what I've seen so  
14 far, with our training, we're probably looking at anywhere  
15 from 2- to \$400, realistically, per employee, you're going  
16 to spend on training, if you're not doing it yourself.

17 And if you are doing it yourself, I guess the  
18 cost could be even higher. The one thing you're going to  
19 have to look at is there are not going to be a whole lot of  
20 companies providing this training.

21 And a lot of these companies are going to be too  
22 small to be able to provide the training themselves.

23 And we start looking at the amount of travel and  
24 cost that is incorporated in the Part 48, that you have to  
25 provide, you know, the cost of travel time and the expense

1 of getting there.

2 Now you're looking at lodging, if you're going to  
3 have us do the 24 hours of training before the miner comes  
4 to work, plus you're going to pay more for the smaller class  
5 size. You're going to look at lodging, meals, on top of the  
6 travel time, plus the down time of that employee.

7 You're looking at anywhere from 200 to \$1,000 per  
8 employee, the cost that could be assessed, you know, to the  
9 sand and gravel operation. Plus you look at, if this person  
10 decides, three weeks down the road, that he doesn't like  
11 this kind of work, you just threw \$1,000 out the window.

12 And maybe that's not the way to say it, as far as  
13 out the window, but you're not gaining anything for that  
14 \$1,000 you've just spent on that employee, because he went  
15 somewhere else.

16 And I think I covered everything I wanted to  
17 cover. I think that's it.

18 CHAIRPERSON ALEJANDRO: Mr. Schafer, could you  
19 give us some idea of what your operation is like, you know,  
20 the number of employees in that kind of operation?

21 MR. SCHAFFER: We're looking at about 300 to 350  
22 employees. We have 30 to 35 sites within seven states.  
23 Each of our sites move, on a regular basis through a year,  
24 anywhere from 15 to 25 times.

25 I guess that's the biggest burden, I guess, to

1 realize that, when you're looking at these smaller towns and  
2 these small fuel companies, and getting somebody to bring,  
3 you know, the sanitation, the portable toilets and that out  
4 to us.

5 To require them to have to do any kind of  
6 training, other than us doing site-specific hazard training,  
7 is pretty much unlikely. I mean, you're not going to get  
8 these companies to do it.

9 And for us to have to train those people before  
10 they come on to our sites is going to be a lot of burden on  
11 the sand and gravel industry.

12 CHAIRPERSON ALEJANDRO: What states does your  
13 company operate in? You said there were seven states?

14 MR. SCHAFER: North Dakota, South Dakota,  
15 Montana, Wyoming, Colorado, Arizona, Texas, New Mexico.

16 CHAIRPERSON ALEJANDRO: Okay. And one thing I  
17 didn't understand, when you were talking about being  
18 adjacent to sites where OSHA was a regulator, and employees  
19 crossing over.

20 And I didn't understand the point you were making  
21 about, you know, training and whether your company would be  
22 required to provide entry training for an employee. If you  
23 could just maybe go over that a little bit again?

24 MR. SCHAFER: Well, okay. Dealing with the  
25 people coming on site, as far as the visitors and the --



1                   CHAIRPERSON ALEJANDRO: Okay. You're talking  
2 about they're not actually working there? They just happen  
3 to be --

4                   MR. SCHAFER: Well, what happens -- and I'm sure  
5 you've seen -- drove by the sites where you've seen a plant  
6 mix, hot mix company or a concrete company sitting beside  
7 the road.

8                   And most of the time you're going to see  
9 conveyors and crushers, because a lot of times, the sand and  
10 gravel industry and the hot mix plants or the paving plants  
11 are working on a close schedule, to where we're still  
12 producing when they come in and start paving.

13                  And you're going to get a lot of back and forth  
14 movement.

15                  CHAIRPERSON ALEJANDRO: Right.

16                  MR. SCHAFER: And for us to try and train or make  
17 sure everyone on their job site is trained, from, you know,  
18 their laborers to their superintendent to their paving  
19 people to their loader operators, is not feasible,  
20 especially when we're going to be the subcontractor, more  
21 than likely, and they're the prime contractor.

22                  And for us to require them to do the training  
23 before we take the job, we're going to lose the job.

24                  CHAIRPERSON ALEJANDRO: So they're not working  
25 for you, but they're adjacent to you, and some of their

1 employees come on to I guess what would be considered your  
2 site?

3 MR. SCHAFER: Right.

4 CHAIRPERSON ALEJANDRO: Okay.

5 MR. SCHAFER: More than likely, we've got the pit  
6 leased up and the land leased up, and they move into our  
7 site instead of on the trail.

8 CHAIRPERSON ALEJANDRO: All right. And as far as  
9 your estimate of cost, you were talking about between 200  
10 and \$400 for training, if you do it in-house, per employee,  
11 and between 200 and 1,000, I guess, if travel is involved,  
12 and you send people off-site.

13 Is that per employee per year, or is that  
14 initially?

15 MR. SCHAFER: Well, depending on the 24-hour or  
16 the eight-hour. I guess, to give you a ballpark, I hire,  
17 right now, a trainer to come in and train our employees, at  
18 6- -- I think, just about \$700 a day. And I could put a  
19 class from 30 to 50 people together. But I also have to pay  
20 their travel time.

21 What I was getting to is I do my annual training  
22 once a year. When we start bringing employees in throughout  
23 the season, which you're going to do, depending on your  
24 job -- you know, the amount of jobs you get through the  
25 year, you start hiring two or three people. Now, you're

1 going to try and hire them in the location you're working  
2 in, or reasonably close.

3 Now, the trainer might be living in, we'll say,  
4 Bismark, North Dakota, and the job might be in Fargo, North  
5 Dakota. Now, there's going to be 250, 300 miles that this  
6 person might have to travel to come for the training, plus  
7 the lodging, plus the smaller classes.

8 If you have to go with the 24-hour right off the  
9 bat, or even the eight-hour, you're looking at spending  
10 probably \$100 for the employee, just for the eight-hour  
11 training, for the day.

12 Now, if you get into the 16- or 24-hour before  
13 you can bring them to work, you're looking at that times two  
14 or three. And then you're looking at the lodging; you're  
15 looking at the mileage; you're looking at the travel time.  
16 That's going to be a burden. That's going to be a heavy  
17 burden on the sand and gravel industry.

18 VOICE: Are you including your labor for paying  
19 people while they're there?

20 MR. SCHAFER: Yes. Well, no. I guess I wasn't  
21 even looking at the hourly wage of the employee while  
22 they're on-site.

23 CHAIRPERSON ALEJANDRO: That would just be the  
24 cost of the training and travel, taking into account the  
25 normal --

1                   MR. SCHAFER: Yes. And I believe pretty much the  
2                   average state scale wage right now is probably anywhere  
3                   along about 14, \$16 an hour and higher. You know, in  
4                   Montana, we're looking at 25 or better.

5                   You start adding that on top of there, you're  
6                   talking a very high expense for the sand and gravel  
7                   industry, for this to be happening to somebody that might  
8                   only work for you for three weeks or, you know, even six  
9                   months.

10                  If they're gone in six months, you've got that  
11                  cost and that person is gone. Now you have to replace him,  
12                  go through that same cost again, and hope he stays -- or  
13                  she.

14                  CHAIRPERSON ALEJANDRO: Do you have any  
15                  questions?

16                  MR. BURNS: I just have, I think, just one, right  
17                  now.

18                  As far as the -- you had mentioned that the  
19                  training records, you could -- you talked about them faxed  
20                  to the plants. Would all your --

21                  MR. SCHAFER: Well, no. I meant faxed to the  
22                  actual MSHA offices, or we have done it before where we've  
23                  been asked for the training, and we went to a truck stop of  
24                  some business that was closer to the town, and been able to  
25                  fax what they needed right off the bat, like a quarterly

1 report.

2 Now, even in that instance, to me, that's kind of  
3 frivolous for the fact that we send those same quarterly  
4 reports to the MSHA offices already. And for us being  
5 required to have those on the site also is kind of a  
6 duplication of paperwork.

7 And if we've got to do that on training, we're  
8 going to have to maintain it in the main office, plus at  
9 each site. And you know you're going to end up losing it,  
10 with the shifting of the employees, or not having it at the  
11 right time, so you're going to end up making that paperwork,  
12 you know, many times before you're covering yourself.

13 MR. BURNS: Okay. That was really my question.  
14 I didn't think you would have fax machines at all your  
15 portable sites.

16 MR. SCHAFER: No. Telephones are hard enough to  
17 get reaching in each area.

18 MR. BURNS: That's -- did you have any questions,  
19 Rod?

20 MR. BRELAND: Yes. You had talked about a 52-  
21 week outline you provide. Is that for each of your site  
22 superintendents, I take it?

23 MR. SCHAFER: That is for each of my foremen, on  
24 anywhere from 30 to 35 sites.

25 MR. BRELAND: Okay. And do you keep track of the

1 people that attend their sessions? And how long are those  
2 sessions normally lasting?

3 MR. SCHAFER: The foreman decides on the length  
4 of the session, depending on the length of the class that's  
5 provided. Like I said, most of these are five-, ten-minute  
6 reading, you know, material.

7 And then the biggest thing we look at is that  
8 the -- address what's going on on the job site, not only for  
9 what's needed as far as production and that, but the  
10 shortcomings as far as guarding and safety and equipment  
11 maintenance and stuff like that.

12 And to me, that should be all attained under the  
13 safety anyway, because it's all dealing with the job at  
14 hand.

15 They have a sign-up book. Each employee that  
16 attends that meeting will assign that sheet. The foreman  
17 will write down the time, write down what the class was  
18 about, or what the training was about, and sign the bottom.

19 And that gets sent in with their weekly  
20 paperwork, which, I'm sure every construction site -- or  
21 most every construction site maintains some kind of hourly  
22 and production rate, you know, that is turned in on a weekly  
23 basis.

24 MR. BRELAND: So is that kept in some sort of a  
25 record? Say, if you asked for an individual's training that

1     they had had during their employment, you could tell them  
2     how many sessions they had been at and --

3                 MR. SCHAFER:  It would be harder to do if I  
4     had -- if you brought in -- say, you need an individual's  
5     name, you know, I might have to transfer -- you know, go  
6     through and see what all plant sites he's been assigned to.

7                 But if you came in and were looking for an  
8     average for each job, I can go by foreman, you know, or by  
9     plant site ID, and I can pull up that foreman's records and  
10    show you every training that he's had on that plant site.

11                MR. BRELAND:  Okay.  And I didn't expect that you  
12    would.  I was just asking for clarification.

13                One other thing you talked about.  I know you do  
14    a lot of mobility in the job sites.  Do you have any kind of  
15    number or percent of employees that are basically stable  
16    year-round versus the number that you're hiring, rotational  
17    type?

18                MR. SCHAFER:  I would say a 30 percent turn over  
19    is probably a pretty fair guess.

20                MR. BRELAND:  So at every job site, when you  
21    move, about a third of your employees are going to be hired  
22    local?

23                MR. SCHAFER:  Well, I wouldn't say every time you  
24    move.  I guess I'm stating through the year, from one year  
25    to the next, you look at probably a 30 percent turn over.

1 And when you start looking at training each -- you know, you  
2 might get a person to stay on for two or three jobs.

3 You might have hired a person because you're in  
4 that location, and at the end of that job, that person  
5 decides he doesn't want to travel, which is part of this  
6 industry, and you lose that employee. Now the next job you  
7 go to, you're going to have to fill that spot, or maybe you  
8 don't even need that spot on the next job site.

9 MR. BRELAND: Thank you.

10 MR. SCHAFER: Mike?

11 MR. FISHER: I have a couple of things I'd like  
12 to add.

13 CHAIRPERSON ALEJANDRO: We need to be sure that  
14 the court reporter is able to get all this, and I don't know  
15 whether the microphone is picking you up. So if you want to  
16 make a statement, you can either come up and use the  
17 microphone over --

18 MR. FISHER: I'll let him do it. The overlapping  
19 of the OSHA and MSHA training.

20 MR. SCHAFER: Oh, that's right.

21 MR. FISHER: And one other quick thing. I'll let  
22 him get to that.

23 MR. BRELAND: We can get you another chair up  
24 here, if you want to come up. You two work together, I  
25 think?



1                   CHAIRPERSON ALEJANDRO: Yes. Just pull up a  
2 chair. And just introduce yourself.

3                   MR. BRELAND: It will just make it very confusing  
4 for the court reporter.

5                   CHAIRPERSON ALEJANDRO: Yes. And for us, when  
6 we're going over it.

7                   MR. FISHER: I'm Mike Fisher, with Fisher Sand &  
8 Gravel.

9                   As we deal with banks and insurance companies  
10 every day -- and I'm sure everybody else does, too -- to  
11 have 24 hours for anybody to step on the plant site or be  
12 there to have training is kind of crazy for them.

13                  We like to be involved with our bank. They come  
14 to our plant sites. The insurance companies come to our  
15 plant sites. You know, we are involved with them.

16                  But if they have to have 24 hours to come to that  
17 plant site, they're not going to do it. And communication  
18 is going to break down between insurance companies, bonding  
19 companies, and banks. I mean, that's just not good for  
20 anybody's business.

21                  Did you want to do the OSHA --

22                  MR. SCHAFER: The other thing, I guess, he  
23 brought up that I forgot to talk about is, with the OSHA  
24 standards and the MSHA standards, a lot of times we get  
25 people that have been in a plant site or in another, you

1 know -- or not a plant site -- but a shop facility or  
2 something like that, falling under OSHA.

3 And there's a very likely possibility that person  
4 has received, you know, the lock-out/tag-out training, the  
5 hazardous communication training, and several other things  
6 that are falling in that same standard that we're going to  
7 have to apply to.

8 The problem is getting the documentation to prove  
9 that that person has some of that so you're not duplicating  
10 that same training. It's going to be definitely a burden,  
11 as far as proof.

12 We should be able to off, somewhat, of what the  
13 employee says, and do somewhat of a quick refresher or, you  
14 know, involved in like a task training or something like  
15 that to where that would cover us, instead of going through  
16 the whole 24-hour, or eight-, or 16-hour.

17 When it comes to the training, like I said, in  
18 our perspective, the best thing that could happen for the  
19 sand and gravel industry -- and I have nothing against the  
20 training; in fact, we do it already, and we're doing it on  
21 an annual basis.

22 The new employees we do hire, what we're doing is  
23 a task training, and they're getting on-the-job training,  
24 and then we do an eight-hour refresher. And every other  
25 year, we do the first aid.

1                   Now, we do that according to the person's  
2                   capabilities and the number of people we have per plant  
3                   site, and break it down that way.

4                   But if we could do a couple-, three-hour training  
5                   before we put this person to work, and follow up with the  
6                   rest of an eight-hour and some hands-on training, to make it  
7                   to, maybe, the 16 hours of training within a six-month  
8                   period of time, I think would be a lot more realistic for  
9                   our industry than to require us to do an eight-hour training  
10                  before we even put them to work.

11                  I think a hazard training or a site-specific  
12                  training or an actual task-specific training would be --  
13                  would go a lot further in our industry, and I think you  
14                  would find a lot more people complying with that, because  
15                  that wouldn't be as burdensome and a lot easier for our  
16                  industry to take on.

17                  But to look at putting this person through eight,  
18                  to 16, to 24 hours of training before we can put them to  
19                  work is really not realistic for our industry.

20                  CHAIRPERSON ALEJANDRO: I have a question. You  
21                  mentioned difficulty in getting records of OSHA training for  
22                  people that you hire who have worked at OSHA regulated  
23                  sites. Have you tried to get those records and had  
24                  difficulties, or are you just anticipating that that would  
25                  present some problem?

1                   MR. SCHAFER: Actually, because it hasn't been  
2 addressed, as far as us having to train, with the way we've  
3 been doing it, we haven't done that. We just went ahead and  
4 trained it all over again, as a refresher.

5                   CHAIRPERSON ALEJANDRO: Uh-huh.

6                   MR. SCHAFER: But that's definitely something I'm  
7 sure all the industries are going to look at because that's  
8 something we're going to want to avoid, not only doubling up  
9 on, but it's also going to save our industry some money on  
10 spending for training of those persons.

11                  CHAIRPERSON ALEJANDRO: Okay. But you haven't --  
12 I mean, you're anticipating difficulties, but you have not  
13 encountered --

14                  MR. SCHAFER: Well, most companies aren't going  
15 to be overly likely to, you know -- and how are you going to  
16 send -- see, I have a sign-up sheet for my class, and I have  
17 OSHA facilities also, and I do the training.

18                  And one of our employees go to a sand and gravel  
19 operation or an MSHA facility and their safety director  
20 calls me and asks me for -- Do you have any training on this  
21 person that I could --

22                  I'm going to have a hard time giving them a list,  
23 with Social Security numbers, that everybody signed, with  
24 their names on it, and saying, Here's your documentation so  
25 you can put it in your file to cover this person.

1                   How are we going to transfer that documentation  
2           saying that, yes, this person has had that training, without  
3           doubling up a whole lot of paperwork or giving away more  
4           information than you actually want to?

5                   MR. BRELAND: Just to follow up on that a little  
6           bit -- and I meant to ask earlier -- when you talk about  
7           initial training that you do presently, if you hired  
8           somebody, do you have, like a formal outline you follow now,  
9           at a minimum, you cover certain things?

10                  MR. SCHAFER: I have an MSHA approved plan right  
11           now, under Part 48, that we follow on our annual training.  
12           When the person comes on the job site, right off the bat, we  
13           do a task training and a hazard-specific training for the  
14           employee. And we run with that throughout the year.

15                  And I guess like the guy from the Union said  
16           earlier, to expect that task training is not being done,  
17           even though documentation isn't done -- you're not going to  
18           walk up and tell a person to go run a \$300,000 piece of  
19           equipment without telling them how to operate it or what you  
20           expect out of it. And to me, that's task training.

21                  You're going to tell them what the controls do,  
22           what you want them to do, and the safety features and the  
23           personal protective equipment. And that's task training.

24                  You're not going to turn a person loose in this  
25           industry, with the dollars that are sitting around on that

1 plant site, without task training them. The documentation  
2 becomes an extra burden. And granted, that's something that  
3 should be done, as far as the hazard training and stuff like  
4 that.

5 The task training, most of the time, that's a  
6 given, because you're not going to put a person into that  
7 job without giving them some type of actual, you know,  
8 explanation of what he's expected to do.

9 MR. BRELAND: As a part of that now, are you  
10 keeping track of that and keeping a record of that, when you  
11 hire?

12 MR. SCHAFER: Yes.

13 MR. BRELAND: Okay. Thank you.

14 CHAIRPERSON ALEJANDRO: Okay. Thank you, Mr.  
15 Schafer and Mr. Fisher.

16 MR. MANZANARES: I have a question I'd like to  
17 direct, please.

18 My name is Tino Manzanares, and I'm with county  
19 technical services. I'm with the a quasi-governmental  
20 agency, and I am the insurance man that shows up at the  
21 plant site, not through private industry, but strictly with  
22 the counties.

23 But I have a question to you gentlemen. I didn't  
24 quite hear you, Mr. Schafer.

25 MR. SCHAFER: Yes.

1                   MR. MANZANARES: I'm impressed that it appears  
2     you have a very well organized training program for your  
3     company. And you gave us the figures on what it would cost  
4     to train your employees.

5                   Do you have any figures on what it would cost you  
6     if this man was injured on the job, and he was not able to  
7     perform his job for the next couple of days, on the cost  
8     that you're bearing?

9                   I mean, the direct cost, and also the indirect  
10    cost, the fact of, who does the job when he's not there  
11    because he got injured because he lacked training, or  
12    because production superseded training. You had to get this  
13    guy to produce.

14                  Do you have any figures to show what it would  
15    cost you?

16                  MR. SCHAFER: Yes. We're breaking that down  
17    right now, to see what the annual cost is going to be, you  
18    know, for the loss of employee and what it costs as far  
19    workers' comp and all that stuff.

20                  Granted, you don't want to put an employee to  
21    work without training them and giving them some experience.  
22    But I'm also saying you've got to look at the realistic part  
23    of it, as far as the cost of what it's going to cost to  
24    actually put this person to work and lose them two to three  
25    weeks later.

1                   MR. MANZANARES: I understand that, and I  
2 understand very well. However, we see operations that come  
3 into the State of Colorado and crush for our clients, then  
4 they move on to the next site.

5                   Oftentimes, they leave injured employees that  
6 worked for them. And then we inherit them later on because  
7 it's the job of the county, so they're forced to work for  
8 us.

9                   And we have to accommodate these injured  
10 employees, because they lacked training, under the American  
11 Disability Act, and later on, under medical leave.

12                  MR. SCHAFER: But all of us fall under those same  
13 burdens.

14                  MR. MANZANARES: We find that it's so unfair to  
15 hire an employee and then not provide any training. It's  
16 almost like wanting him to fail or to be injured.

17                  MR. SCHAFER: No. I guess maybe you  
18 misunderstood what I was talking about. I never said  
19 nothing about not training.

20                  I'm saying let's train this person as he's going  
21 in the job. Let's not go stick 24 hours of training in this  
22 person before we even put him on the job site.

23                  MR. MANZANARES: And I understand that. The  
24 other thing is that we often find that, because production  
25 supersedes anything else, the employee is given a five-



1 minute briefing on his tasks that he's going have to perform  
2 for the next eight hours, and he's not performing a task of  
3 using a shovel or a pick or doing this.

4 He's often assigned complex areas in the sand and  
5 gravel operation, whether it be a screening plant, whether  
6 it be a pressure, whether he'll be driving a truck, or get  
7 on the loader and operate that.

8 And we've seen people who assign employees to  
9 these tasks when they're not qualified to do that. They  
10 often do it for four or five minutes, and it's during that  
11 time that we see some injuries.

12 MR. SCHAFER: And I understand your points.  
13 What -- I guess any company out there right now that's  
14 producing of working that thinks that they can hire a person  
15 or put a person to work without sticking some investment in  
16 them and expects to lose them evidently hasn't been in  
17 business long enough to realize that doing it the safe way  
18 instead of worrying about production all the time isn't  
19 going to make their company any money.

20 We are going above and beyond, right now, what  
21 MSHA is asking for, before this rule is even put in place.  
22 What we're saying is there's some things we'd like to  
23 address to make it not so burdensome on us.

24 For you to put every company in the same group,  
25 saying that we're going to do the same as some other company

1 has, is totally ridiculous. You don't know what our  
2 training plan is or what we do. Granted, there are those  
3 companies out there, those companies who fell by the  
4 wayside.

5 The biggest thing we're missing right here is the  
6 employee has to take some responsibility for his own  
7 actions. Common sense goes a long way. MSHA has got us  
8 under -- guarding every possible thing a person could get  
9 into.

10 The work habits of the employee is something we  
11 cannot control. You can train. I can take a person and put  
12 them through six months of training straight and still have  
13 a person go out and injure himself. Now, is it because I  
14 failed as a trainer? I don't think so.

15 You have to start looking at the individual  
16 employee has to have some responsibility. And just because  
17 this person had quit or decided he has a back injury, or  
18 maybe he came to work for our company with an injury and  
19 needed a place to get some more money. I'm not saying  
20 that's always the issue. But you have to look at every  
21 situation.

22 And to put every company in the same instance is  
23 not fair.

24 CHAIRPERSON ALEJANDRO: And that's really what  
25 we're here for. And we're trying to figure out exactly what

1 kind of requirements are going to do the most good. I mean,  
2 and obviously balancing that against, I mean, the burdens on  
3 the industry, which we, as a regulatory industry, have got  
4 to consider.

5 Now, would you state your name and spell it for  
6 us? And would you like to come up and make a presentation  
7 and give us your recommendations for --

8 MR. MANZANARES: My name is Tino, T-I-N-O,  
9 Manzanares, M-A-N-Z-A-N-A-R-E-S. And I am with County  
10 Technical Services, a quasi-governmental agency.

11 And I compliment the man on his philosophy and  
12 his attitude. I wish we could see more of those in the work  
13 area.

14 It's just that it bothers me that Part 48 has  
15 been around. And people are being maimed and injured  
16 throughout the year.

17 CHAIRPERSON ALEJANDRO: Well, and we are --

18 MR. FISHER: I guess I've got one thing to add to  
19 that. As far as hiring a laborer or shoveler, that he  
20 doesn't just do that job. That might be true later on, but  
21 that production does not supersede safety.

22 If I hire somebody as a laborer and my dozer  
23 operator quits, and I'm still worried about production,  
24 there is no way I would ever take that laborer and put him  
25 in a D-8 because we're lacking production.

1                   He's going to cost me ten times as much money as  
2           if I shut that D-8 down and I shovel it into the trap  
3           myself. There's just no way that would ever happen.

4                   MR. MANZANARES: Thank you.

5                   CHAIRPERSON ALEJANDRO: Thank you very much.

6                   MR. SCHAFER: I guess maybe I came across wrong  
7           on some of the things I was stating earlier, but I did not  
8           say that I didn't want to invest any money in training this  
9           person before we even put him to work.

10                  You know, you're not going to put a person out in  
11          this type of industry -- like I said, on every side -- and  
12          I'm probably pretty much speaking for everybody -- you're  
13          looking a \$1,000,000 to \$2,000,000 worth of equipment you've  
14          got invested on that site right there.

15                  You're not going to take anybody without putting  
16          some investment of training in them and turn him loose in  
17          that kind of situation.

18                  I mean, it's not the same as handing a person a  
19          set of keys for a pickup that drives every day, and asking  
20          him to drive down the road and pick up parts for you. We're  
21          in a whole different situation here.

22                  And like I said, to put an hour or two or  
23          something like that before the person works and then trying  
24          to find a reasonable amount of time to get a class size  
25          together so the burden of expense and travel isn't going to

1 be so hard on you, to me, is not asking for too much.

2 And I definitely think that's something that we  
3 have to look at, as far as before we make this regulation,  
4 because we're not like the coal mine where they can hire  
5 somebody and, before they come in, everybody comes to this  
6 one location and they can sit down and train them.

7 And when they hire, they're going to hire eight,  
8 ten people. When we hire, we might hire one person, and it  
9 might be 500 miles away from us. And for us to travel, or  
10 them to travel for one person, as far as the money part of  
11 it -- and let's face it, everything comes down to the money  
12 part of it -- that's not real feasible for our industry.

13 And to not trust the foreman who you put in  
14 charge of that job site to do the training or to do some  
15 training on that individual before you put them to work --

16 I think that person is well qualified, because  
17 you didn't put him in charge of a couple million dollar site  
18 for no reason. You put him in charge of that site because  
19 you feel he knows what he's doing. And to me, that falls  
20 under a competent person.

21 CHAIRPERSON ALEJANDRO: Okay. Thank you very  
22 much. We appreciate your input and suggestions.

23 Do we have anyone else who would like to speak  
24 who hasn't signed up? Okay. Sir?

25 MR. BROWN: My name is Richard Brown, and I am

1 with Wyoben, Incorporated. We are a bentonite clay mining  
2 and manufacturing firm, based in Billings, Montana, with  
3 mining operations in northwestern Wyoming, in the Big Horn  
4 Basin area.

5 There are two things that I'd like to comment on  
6 briefly. Before I do this, I'd like to explain a little bit  
7 about what the bentonite industry is and what it does,  
8 because we are a little different than the other mining  
9 industries and representatives that are being defined as  
10 those who will be covered under these new proposed  
11 regulations.

12 The bentonite industry is composed of, primarily,  
13 five companies, here in the United States, five major  
14 companies. I believe there are representatives of three  
15 companies here today.

16 Our operations are all surface operations, open  
17 pit contour mines, contour strip mines, typically of fairly  
18 small surface area and shallow depth.

19 All mine sites, all active mine sites where  
20 extraction is taking place, are tied directly to specific  
21 milling sites, specific processing plants.

22 Each processing plant may have as many as 15 or  
23 20 mine sites attached to it, in various stages of activity,  
24 either being opened up, being stripped, sites where the  
25 mineral is being taken out, or sites that are being

1 reclaimed in one phase or another.

2            Depending upon the phase that these sites are in,  
3 there will be anywhere from one to six or seven people  
4 working at them, at any one point in time.

5            Individual mine sites may be as much as 40, 50,  
6 60 miles away from a mill site, or they could be very, very  
7 close, within a mile or two.

8            So my first comment speaks to the concept of  
9 where training records should be kept for inspectors'  
10 access.

11           We often have, in our specific operations,  
12 miners, people in the field, that will be at three, four,  
13 five individual mine sites during the course of one day.  
14 These individuals may be part of teams or groups that are  
15 coming and going, separating and recombining during the  
16 course of the day.

17           So it becomes very, very problematic for us to  
18 attempt to keep records at the individual mine sites for  
19 inspectors.

20           I should add that the individual sites, even when  
21 they are being actively opened, seldom have any physical  
22 structures on-site. The mining equipment and, perhaps, a  
23 trailer with supplies and lubricants, things of that nature  
24 in them, is all that is actually there.

25           So it's not convenient or something that would

1     lend itself easily to storage of records, even if the  
2     personnel were pretty constant at that site for any period  
3     of time.

4             The time frames for these various activities at  
5     the various mine sites vary from a matter of a few hours  
6     for an individual, during the extraction phase or  
7     reclamation phase, upwards to perhaps as much as a month for  
8     the active mining phase.

9             So for our particular operations, I do not see an  
10    easy way to maintain records for individuals' training for  
11    inspectors' access at the mine site. I do see, if the  
12    requirement were made that we had to do this, something that  
13    would almost certainly cause us to be in violation  
14    frequently because of the difficulty in ensuring that  
15    current records were on-site.

16            Because all of the mine sites are tied directly  
17    to plant sites, it seems to me that, for our industry, at  
18    least, it would be a most suitable and workable situation to  
19    have the records be kept at the plant sites. Those are the  
20    focus of everything that is done in our industry, anyhow,  
21    and that is where all other records tend to be kept.

22            It seems to me that the issue here, generally,  
23    not just for our industry, is one of inspector access to the  
24    records, ready access, and therefore, it is a time sensitive  
25    thing, not a geography sensitive issue.



1           And as long as the records could be provided to  
2     the inspector within a reasonable period of time, whether  
3     that's 12 hours, 24 hours after actual on-site inspection,  
4     or a couple of hours, that would suffice.

5           The need to have the records physically on-site  
6     at the time an inspector appears there, though, does not  
7     appear to me to be the primary objective -- or should be the  
8     primary objective.

9           So I would ask that consideration be given to  
10    looking at a time dependent criteria rather than a geography  
11    dependent criteria here.

12           CHAIRPERSON ALEJANDRO: Do you have any  
13    suggestion for what that time might be?

14           MR. BROWN: Given the way things are going with  
15    information exchange and electronic format now, I can see,  
16    down the road, that being almost instantaneous.

17           I would say, from our standpoint, we could  
18    probably do it within a matter of two or three hours,  
19    because we do not have a long distance to go from any one  
20    our mine sites to the plant site. And typically, the  
21    inspectors come back in to the plant sites anyhow, after  
22    they do the field inspections.

23           Others, in other industries, might have a  
24    different perspective on that, but my guess is, sometime  
25    within 24 hours would be easily met by most people.

1           And even that kind of time frame should meet the  
2     objective of allowing the inspector to verify that proper  
3     training has been received by all people that were working  
4     at a particular mine site, which I believe is the real  
5     objective here.

6           The second comment I'd like to make is concerning  
7     the less than 30-minute training sessions.

8           It's my belief that less than 30-minute training  
9     sessions should be allowed, simply because that gives the  
10    individual operator the flexibility to have some sessions  
11    that would not be 30 minutes in length, whether it's five  
12    minutes, 18 minutes, 25 minutes, it doesn't make any  
13    difference.

14          There are many topics that are covered in  
15    training sessions that do not need to be covered in excess  
16    of 30 minutes.

17          If there was a 30-minute minimum mandated, you're  
18    going to find training sessions being stretched out for no  
19    valid purpose.

20          Now, it's been mentioned that there will be an  
21    increased record keeping burden placed upon operators who  
22    are attempting to keep records of training sessions that  
23    last only a few minutes. I think that's correct. And I  
24    think that is one of the limiting things that will cause  
25    operators not to want to do training sessions of a few

1 minutes.

2 But that's something that should be left up to  
3 the operator. If they can handle the record keeping burden  
4 of showing the training sessions of five minutes in length  
5 have been conducted, and they want to continue doing that, I  
6 don't see anything inherently wrong with that, as long as  
7 information that is useful and necessary is being given out  
8 to the worker.

9 Flexibility for the operator is really a big  
10 thing. As soon as you start requiring training sessions of  
11 a certain length, you start tying the operator's hands.

12 We all know, from having conducted training  
13 sessions in industry, that the workers do start to lose  
14 their attention at about 30 minutes. The information you're  
15 giving no longer really hits the target. They get tired;  
16 they get bored.

17 And so I know, in our company, we try and work on  
18 30-minute segments, knowing that this is the case. People  
19 are fresher when they hear things in 30-minute increments.

20 That's not to say that we bring people in for  
21 only 30 minutes and then cut them loose and let them go  
22 someplace else.

23 But we may train for 30 minutes, let them go out,  
24 do something for a short period of time, half-an-hour, hour,  
25 come back, do more, just so that they are fresh mentally

1 when they hear the information we're talking about.

2 But I know that we often have things that take  
3 less than 30 minutes to get the information across.

4 So I would ask that consideration be given for  
5 allowing less than 30-minute training sessions, so that we,  
6 as operators, have the flexibility of determining the actual  
7 length that meets the circumstance, and not be mandated to  
8 have longer sessions that must be filled with  
9 inconsequential material.

10 That's all I have to say at this point in time.  
11 I'm sure that we will have more written comments, down the  
12 line.

13 If you have any questions, I'd be happy to  
14 entertain them.

15 CHAIRPERSON ALEJANDRO: I don't have any  
16 questions. Do you have any?

17 MR. BRELAND: No, I don't. Thank you very much.

18 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.  
19 Brown.

20 MR. SCHAFER: I'd like to just add one comment,  
21 as far as our annual training.

22 CHAIRPERSON ALEJANDRO: Could you just identify  
23 yourself, for the record?

24 MR. SCHAFER: I'm Kelly Schafer, of Fisher Sand &  
25 Gravel, again.

1 CHAIRPERSON ALEJANDRO: Thank you.

2 MR. SCHAFER: Our annual training, when you  
3 started adding up what we're paying our employees to be on-  
4 site, what we're paying for hotel rooms and meals and  
5 training, on an annual basis, we probably spend somewhere  
6 between 20- and \$25,000 a year on this training.

7 And when it comes to our traveling to  
8 our specific -- you know, sometimes we bring them all to one  
9 location, and sometimes we travel to different locations,  
10 and that's pretty much a ballpark.

11 CHAIRPERSON ALEJANDRO: And that's total, for all  
12 employees?

13 MR. SCHAFER: Yes.

14 CHAIRPERSON ALEJANDRO: And how many employees,  
15 again, are we talking about?

16 MR. SCHAFER: We're training anywhere from 200 to  
17 about 250 in a year.

18 CHAIRPERSON ALEJANDRO: In a year? Okay.

19 And so the -- I'm sorry -- so the 20- to 25,000  
20 includes everything?

21 MR. SCHAFER: Yes.

22 CHAIRPERSON ALEJANDRO: And does that also  
23 include the normal compensation for miners?

24 MR. SCHAFER: Yes. For anywhere from a one- to  
25 two-day period.

1                   CHAIRPERSON ALEJANDRO:   Okay.   So that would be  
2   an all-inclusive figure, then?

3                   MR. SCHAFFER:   Yes.

4                   CHAIRPERSON ALEJANDRO:   Okay.   All right.   Thank  
5   you.

6                   Is Ken Pike here, by any chance?

7                   Do you have another comment, Mr. Schaffer?

8                   MR. SCHAFFER:   The last thing -- the main reason  
9   that seems a lot cheaper is because you're looking at a  
10   quantity, you know, a larger quantity of people.

11                   So when you start looking at before you put them  
12   to work, that price is going to be substantially higher,  
13   because, you know, you're not going to get the lodging  
14   discounts; you're not going to get the meals discount;  
15   you're not going to get the group discount in the training  
16   part.

17                   And we do have our people carpool and get up  
18   there to where it's not an individual, one person at one  
19   time, training cost.

20                   CHAIRPERSON ALEJANDRO:   Okay.   Thank you.

21                   Is there anyone else who has not spoken who would  
22   like to speak at this time, or is there anyone who has  
23   already spoken who is ready to share comments that they  
24   would like to make, things that have been raised since they  
25   made their remarks?   Mr. Tuggle?

1                   MR. TUGGLE: Yes. It's Harry Tuggle,  
2                   T-U-G-G-L-E, with United Steel Workers.

3                   And I guess a lot of the comments I've heard  
4                   since I talked earlier are very interesting.

5                   And yes. There is a number of operations that  
6                   are unique unto themselves.

7                   And sand, gravel, stone is not like coal mining.  
8                   But neither is sand, gravel like stone.

9                   If you talk about a sand, gravel pit or a quarry,  
10                  or a mom/pop operation, or a roadside portable operation,  
11                  versus a stone quarry in Vermont that's -- you're talking  
12                  500-feet deep quarries, giant derricks, explosives, heavy  
13                  equipment, one thing and another.

14                  So all of this is trying to be meshed into a  
15                  nutshell, based on the mandate here by Congress on the  
16                  issue.

17                  I can sympathize with a number of things that's  
18                  been said, and even from the last speaker, Mr. Brown, and  
19                  his concern about the crew members moving from one operation  
20                  to another, with the situation that an employee might even  
21                  lose his own training records. You know, in some areas, the  
22                  individuals are required to have them in their hip pocket,  
23                  in their billfold.

24                  There is a headquarters record keeping area, but  
25                  if an inspector walks on site and says, Has this guy been

1     trained, and the guy, without even the supervisor, you know,  
2     Here's my training record and here's the signatures.

3             At the same time, there can be situations of that  
4     individual losing it, and all of a sudden he doesn't have  
5     the records on-hand now, and there is no room for the 24-  
6     hour flexibility area written into the standards on the  
7     issues, it would present some problems.

8             Also, back on some of the earlier comments, when  
9     you talk about the records being kept by computer systems  
10    and so forth -- and I can certainly appreciate that, with  
11    all the new technologies coming down the pike.

12            Matter of fact, if you're into the computer  
13    system and someone says, Well, we want to use a form  
14    developed by us versus a 5023 form, and if you're into  
15    computer systems, you can download the 5023 form and fill it  
16    in. It's on the Internet by MSHA itself.

17            If it complies quite a bit with the information  
18    needed on the 5023, I don't have a problem with that one way  
19    or the other.

20            The problem I have with computer data, unless  
21    it's been scanned or can be verified in some form or  
22    fashion, that's a picture of an individual's signature. I  
23    mean, it's not a record with the individual's signature on  
24    it.

25            And I appreciate that these are on file and can



1 be drawn on and say, Yes. This is what the original looks  
2 like. And that original is also maintained in a bank  
3 somewhere else -- and that is somewhat duplicate record  
4 keeping, but that signed certification of training has to be  
5 somewhere, because then the miner is to be given copies of  
6 that, should he leave the operation and so forth.

7 I certainly appreciate the remarks made by the  
8 insurance person here, Tino, I'll call him.

9 But there's some things in this whole realm, as  
10 we're talking -- all the way up from mom and pop operations  
11 all the way up to big granite quarries or whatever we might  
12 be talking about -- but there's something, to me, getting  
13 lost.

14 People are concerned about an insurance company  
15 guy coming on the property, or a bank person coming on the  
16 property, or a guy delivering fuel on to property, or  
17 dropping off some porta-potties, and worried that they're  
18 going to have to have eight or 24 hours of miners' training.

19 And I don't know anywhere where that's done.  
20 It's not practiced. I don't see the concern.

21 If I go on a mine property, which I do quite  
22 often, I'm led around by someone that is familiar with that  
23 mine. I'm not given training, unless I go underground and  
24 need refresher training on self-rescue or something like  
25 that.

1                   And that's, you know, five minutes, and you stay  
2                   with this guy all the time, and whatever he says do, you do  
3                   it. Here's a picture of our operation. Here's what we do  
4                   here. You stay with him.

5                   And by and large, a number of these vendors that  
6                   come on the property, we shouldn't even be concerned about,  
7                   unless I'm wrong and MSHA is somewhere saying that these  
8                   people have to be trained eight and 24 hours, as though  
9                   they're a production miner.

10                  CHAIRPERSON ALEJANDRO: I don't think so. I  
11                  mean, I'm not as familiar with the Part 48 policy as I  
12                  probably ought to be, but I would agree with you that there  
13                  are lines to be drawn as far as what type of training is  
14                  appropriate.

15                  And coming on to the mine property doesn't  
16                  necessarily mean that you get a 24 hours. It really is  
17                  going to depend on what it is that you're doing.

18                  MR. TUGGLE: Okay. Just a couple of other  
19                  comments.

20                  And I also appreciate, I think it was raised by  
21                  Mr. Schafer, about the -- someone doing the teaching or  
22                  training that has hands-on experience. Those guys are the  
23                  experts. I would agree. The guys in the front and so  
24                  forth.

25                  As much as you can stay away from a college or

1 professionals or whatever, or you can get the State to do it  
2 for free, or whatever, to do some training. But if you have  
3 a competent person with teaching capabilities with hands-on  
4 experience, it's a lot better approach than some of the  
5 other means that's available that runs up exorbitant that  
6 were being quoted earlier.

7 But also, in talking about the first aid issue,  
8 Mr. Schafer was saying it was somewhat overkill there. And  
9 I think that's a bad term to use on that issue.

10 But I guess, being a member -- and there may be  
11 some of you that have been members of home safety  
12 associations, where I have been a member for the last 20  
13 years, and there's guys on there that's been on there for 30  
14 years plus and so forth.

15 And that's part and parcel of the home safety  
16 associations' philosophy, MSHA's philosophy, and so it's not  
17 just for that miner. You've taken on a family when you hire  
18 me or a woman.

19 That particular training that you give to him, he  
20 can take home with him. That may be his kids, his wife, his  
21 neighbors, or whatever it might be, that he might use that  
22 information.

23 One other thing that I want to touch on, because  
24 of the broad range of the types of industries that we're  
25 talking about within this group of mining entities.

1           And it's been talked about, you know, that eight  
2   hours should be at least the initial time spent on the job,  
3   and no less than 30 minutes by some, and others, at the  
4   operator's discretion, and so forth.

5           Some believe it's six hours, and then I'll put  
6   them on the job and filter the other in, all the way down to  
7   two hours and filter the rest of the training in, and so  
8   forth.

9           I believe we should come up with a reasonable  
10   figure. I believe a reasonable figure is already  
11   established, as I've stated before, within Part 48.

12           There's already an approach and an entity for  
13   change to that.

14           And I think maybe it could be referred out within  
15   Part 46, on petitions for modification, that if you have a  
16   given operation where you've got people at five or six mine  
17   sites, or you have an operation where you have 30 percent  
18   turn over, or you have an operation that's unique, getting  
19   into bentonite or phosphates and a number of different ores  
20   or materials you would be talking about, is somewhat of a  
21   burden on MSHA, as an administrator on the metal/nonmetal  
22   side.

23           But coal does this constantly. Every week, you  
24   see ten and 15 petitions for modification on standards in  
25   coal, all the time. I don't know how they keep up with

1       them.

2                   But I think for certain segments of mining that  
3       eight hours would not fit the bill, that immediate  
4       particular circumstances, that 30-minute increments is  
5       unreasonable for these particular operations or whatever,  
6       those operators could apply for a petition for modification  
7       and show by record, Look, this is our last two-years record,  
8       three-years record, or whatever.

9                   We have a 30 percent turn over that's beating us  
10       to death, it's costing us money left and right. We've got  
11       to spend a little less time with the individual, except  
12       site-specific.

13                   We don't want to get into first aid right away.  
14       We don't want to get into -- in many of the sand, gravel,  
15       you're not into explosives there, so you're talking about  
16       just hazard and site-specific.

17                   And you could be asking those things, I think, in  
18       a petition for modification, where you need some sort of  
19       variance from the actual rule that the others should be  
20       living by.

21                   We can't have a super-weak standard for a super  
22       mom/pop operation and try to apply that in granite or  
23       limestone quarries where you've got depths of, as I said, 5-  
24       and 600 feet and you've got derricks all over the place,  
25       explosives, flame burners that cut the stone versus a shovel

1     that digs sand.

2                 So, as I said earlier, there's got to be some  
3     moderation in all things. And I think that we continue to  
4     pursue this.

5                 And where you have those problems, and where  
6     those hearings occur, as long as those keep coming forward,  
7     every one of them is good points, good food for thought,  
8     needs to be addressed.

9                 And some of these things that's been said  
10    already -- and we'll be looking at the whole record before  
11    our final comments, and state a position as to why we think  
12    this should be here for this particular commodity and this  
13    should be maybe treated differently for this particular  
14    commodity, on the basis of a potential for a petition for  
15    modification.

16                With that, I have no other comments.

17                CHAIRPERSON ALEJANDRO: Do you have any  
18    questions?

19                MR. BRELAND: No. Thank you.

20                CHAIRPERSON ALEJANDRO: Thank you very much, Mr.  
21    Tuggle.

22                MR. BURNS: I've just got one. I guess, on the  
23    contractors, you feel that should be something that we  
24    should try to clear up, in this role, as to what types of  
25    people need to have the 24 hours and which don't?

1 MR. TUGGLE: Oh, absolutely.

2 MR. BURNS: Just to clear up a lot of the  
3 confusion that's out there. Because this is --

4 MR. TUGGLE: Unless I misunderstood one of the  
5 earlier speakers, he was talking about this shaft and slope  
6 mining. To me, if you have an operation that, all of a  
7 sudden, you get into shaft and slope -- and I'm not thinking  
8 a slope of a hill, a slope of a mine and a shaft of a  
9 mine -- you've now jumped from Part 46 back into Part 48.

10 So that entity itself, in my opinion, needs to be  
11 stricken. You don't even need to discuss it. It's already  
12 covered.

13 CHAIRPERSON ALEJANDRO: Are you intending, in  
14 your final written remarks, are you planning to address the  
15 issue of different categories of employees?

16 I mean, if you could, I mean, we would appreciate  
17 it, I mean as far as who gets the 24 hours and the eight  
18 hours, depending on the contractors that are coming on  
19 property, and the banker or the insurance salesman, or some  
20 middle category besides that.

21 If you could address that in your written  
22 remarks --

23 MR. TUGGLE: Yes. And it's going to be quite  
24 simple and, I think, straightforward, on the basis that, if  
25 you have individuals on there --

1           And if you've got a potato chip delivery guy and  
2   he comes on a mine every day, just because he's on a mine  
3   every day, and he does not extract materials, does not run  
4   machinery or conveyor systems or involved in the process,  
5   other than filling a potato chip machine, this guy doesn't  
6   need training, in my opinion.

7           Nothing to do with the 24, except that that guy  
8   has to be advised as to the area he's going to, or if  
9   there's another area, be escorted to another area to fill  
10   his potato chip machine, or whatever.

11          The operator should not be burdened with even the  
12   thought of eight and 24, or whatever.

13          CHAIRPERSON ALEJANDRO:   Okay.   Thank you very  
14   much.

15          MR. TUGGLE:   Thank you.

16          CHAIRPERSON ALEJANDRO:   Mr. Schafer?

17          MR. SCHAFER:   Yes.   I just want to clarify one  
18   thing.   I guess he was talking about I said that the eight  
19   hours of training for the first aid/CPR.   He said I said it  
20   was overkill or, you know, not worthwhile.

21          If you have ever trained a first aid/CPR class,  
22   where you have a certified trainer -- and I didn't want to  
23   get into this, because I guess it didn't need to be brought  
24   up in here -- but how many employees that are older in your  
25   companies that don't need it?



1           You know, maybe that are heavy smokers or their  
2 hands are so thick and fat that they can't bend over to do  
3 the compressions, or they can't breathe for themselves and  
4 somebody else, they can't read the text books to go through  
5 the training.

6           You're spending a lot of extra time going through  
7 this with this person, and they might not comprehend it.

8           Second of all, you've got a lot of people, when  
9 they come in to my classes, say, I don't want to do this. I  
10 don't want to be embarrassed because I can't do it in front  
11 of the rest of the people that are in the class, and I'm not  
12 ever going to help anybody else.

13          So you're spending eight hours of training on  
14 this employee, and he's probably going to be out here  
15 looking somewhere else, and he's disturbing the rest of the  
16 class. Or maybe the person is fine and is watching.

17          But if you're going to spend the time training,  
18 let's have the people that are going to take the ball and  
19 fix the problem or help in the situation at the time.

20          I'm not saying it's a waste of training. We  
21 train the family members. I bring the wives in during the  
22 training, and I offer choking for infants and basic CPR, and  
23 basic stuff like that. We provide that for them.

24          I'm not saying that I don't care about the  
25 families. What I'm saying is let's spend the money where it

1 needs to be spent.

2 CHAIRPERSON ALEJANDRO: Okay. Thank you very  
3 much. Mr. Tuggle?

4 MR. TUGGLE: One other comment. And maybe we  
5 don't need to continue to elaborate on this. But I came  
6 from underground mining, hard rock mining, and we had the  
7 same situation of a number of -- I mean, big-hearted rock  
8 miners, their hands look like baseball mitts compared to  
9 mine.

10 Took on two concepts. And we had people that  
11 could not read. We didn't have anybody that couldn't count,  
12 from either one to five or one to 15.

13 So it left one option, either attempt to provide  
14 this training to all of these individuals, or have a  
15 situation occur in front of this individual and he said, I  
16 stood there and did nothing because I didn't know what to  
17 do.

18 Thank you.

19 CHAIRPERSON ALEJANDRO: Thank you very much.

20 All right. Again I'll ask. Is there anyone who  
21 has not spoken who would like to speak, or anyone who has  
22 already spoken who has additional remarks? Yes? This  
23 gentleman over here.

24 MR. ELLISON: My name is James Ellison;  
25 E-L-L-I-S-O-N. I'm the safety supervisor of the Fort

1 Collins plant of Whole Land, Incorporated.

2 We're a manufacturer of Portland cement. We have  
3 112 employees at our plant. Twelve of those employees are  
4 involved in extraction work. The other 100 employees are  
5 involved in the manufacturing of converting the limestone  
6 extracted from our in-plant quarry into Portland cement.

7 Typical of all cement plants, we have a very,  
8 very large outlay in capital to produce our product.

9 We have very expensive heavy equipment. We don't  
10 run small equipment. We run big equipment.

11 We're very training conscious. We're very proud  
12 of our training record. We do new miner, both inexperienced  
13 and experienced; we do annual refresher; we do first aid and  
14 CPR. We keep 2/3 of our employee base certified in both CPR  
15 and first aid, even though the Poudre Valley Fire Authority  
16 Station Number 7 is less than a mile away from our plant.

17 Training budget, I can document \$40,000 a year,  
18 for the past two years, in training costs, of all types of  
19 training, and that does not include any salary or wages.  
20 That's what we've paid to bring people in or send our people  
21 someplace else to be trained.

22 Some of our best training is by manufacturers'  
23 representatives. These people are not necessarily MSHA  
24 qualified as instructors.

25 Recently, we brought a manufacturer's rep in from

1 Victor Torch Company and, even though we have many welders  
2 and maintenance people that carry a list of welding  
3 certifications as long as your arms, they admittedly learned  
4 many, many new and important things from this non-MSHA  
5 certified instructor.

6 Even with all the training and our belief in  
7 training, we have problems with training once or twice a  
8 year.

9 Cement plants are very dependent upon the kiln.  
10 That's the heart of the plant. That's where the conversion  
11 takes place, the chemical reaction from limestone into  
12 cement clinker. We call it a burning process. And the  
13 limestone is actually turned into a molten state to drive  
14 off the impurities and cause the reactivity that is  
15 necessary in Portland cement.

16 When the kiln goes down, the entire plant goes  
17 down. Extraction work ceases.

18 And typically, we bring in many, many contractors  
19 that are on-site for specific jobs. Some of them may be on-  
20 site for environmental equipment such as dust collectors or  
21 byge houses; some may be specialists in refractory lining  
22 for the kiln; some may be iron workers; we bring in some  
23 conveyor people; equipment; field surface.

24 We use all kinds of contractors during this  
25 period of time. They are not involved in any kind of

1 extraction work whatsoever. There is no extraction work  
2 going on during these periods.

3 Those contractors have no need of eight hours of  
4 new miner training; they have no need of 12 hours or 24  
5 hours.

6 What they do have need of is site-specific hazard  
7 training in the site, the area of the plant, that they're  
8 in. And this may take one or two hours to alert them of  
9 what is in that area that may cause an injury.

10 They don't want to be miners. They're experts at  
11 what they're doing. And there is no reason that we should  
12 ever give them an hour of ground control or 15 minutes of  
13 ground control or self-rescuer training, because they're not  
14 going to be involved in any of these. They're not going to  
15 be exposed to any of those hazards.

16 The training of the contractors, whether it's  
17 done by the miner, which is a burden imposed on the miner,  
18 the mine operator, for these short periods of time, or  
19 whether it's done by the contractor, needs to only be site-  
20 specific hazards that they will encounter while they're on  
21 our mine site.

22 That's all I have to say. Thank you.

23 CHAIRPERSON ALEJANDRO: Anybody have any  
24 questions?

25 MR. BRELAND: No.

1                   CHAIRPERSON ALEJANDRO: Thank you very much, Mr  
2     Ellison.

3                   Is there anyone else?

4                   All right. I would like to thank you all for  
5     attending, and particularly those speakers who made  
6     presentations.

7                   We're going to be closing here in a few minutes,  
8     but before we do, I'd like to give you a short summary of  
9     what we expect our schedule is going to be on this project.

10                  As I said in my earlier remarks, we're intending  
11     to publish a proposed rule in the Federal Register, sometime  
12     in the early spring.

13                  And at that point, then we go into what's called  
14     a comment period. And that includes a lot of people to  
15     submit written comments on the proposed rule.

16                  And also, generally, we will schedule at least a  
17     couple of public hearings, which are going to be similar in  
18     format to the public meetings that we're having right now,  
19     where people can come in and give specific comments on the  
20     proposed rule.

21                  We take those comments, the hearing comments and  
22     the written comments, and then we are intending to then  
23     publish a final rule before the final deadline of September  
24     30 of 1999.

25                  I would like to encourage people who have already

1 spoken and have additional remarks that they would like to  
2 make, or people who maybe did not feel prepared or ready to  
3 make remarks today, to submit written comments to MSHA.  
4 Again, I encourage you to send those in before February 1,  
5 1999.

6 The address would be the Office of Standards  
7 Regulations and Variances for MSHA, which is in the  
8 November 3 notice of meeting. If you don't have that  
9 address, please come up to the front, and we can give you  
10 the address, if you want to know where to send those.

11 And finally, if you are here and have not signed  
12 up on the attendance list in the back, I would ask you to do  
13 so.

14 And I know that there are a couple of people who  
15 asked us earlier for a copy of the attendance sheet. And if  
16 you want to come up, we'll try and get you copies if we can  
17 find a copy machine in the hotel somewhere.

18 But again, thank you -- oh. Yes?

19 MR. CODY: There was a pretty quick transition  
20 between, Do we have any other speakers, and your closing  
21 remarks. I really did feel as though I wanted to make a  
22 couple of comments. Is it too late?

23 CHAIRPERSON ALEJANDRO: Oh, no. Absolutely not.  
24 Come on up.

25 MR. CODY: Feel free to shut me down if this gets

1 too far out from where it should be.

2 My name is Rod Cody, and I'm with the Wyoming  
3 MSHA State Grants program. I'm the Director there.

4 First off, I want to say that I've been in and  
5 around the industry for some 30 years, and that includes  
6 underground, surface mining, sand and gravel. I've been  
7 around a good long time. Construction, as well.

8 What I've seen, coming from the old days, if you  
9 will, is that our greatest danger, in whatever industry  
10 we're in, is a lack of training.

11 Now, it sounds to me like everybody that's been  
12 up here and talking pretty much has the same thing to say,  
13 We are providing the training.

14 So if the training is being provided, number one,  
15 I don't see where the problem is with mandated training.

16 I do see some problems with the 24 hour  
17 situation. I feel as though everybody should have that 24  
18 hours, but I also feel that they shouldn't be mandated to do  
19 it right away.

20 I think they should have to do the minimum of  
21 eight, and then the additional 16 within 60 days, strictly  
22 because there are certain things that go on on given job  
23 sites that obviously need to be covered.

24 Now, by mandating 24-hour training, that doesn't  
25 necessarily say that Company X or Company Y has to pay for



1     that training.

2                 In my area of the state, you basically don't do  
3     anything if you don't have the 24-hour training. For  
4     instance, over the weekend, I had to get training for my  
5     wife. She has no intention of working on mine sites, but  
6     she had to have the 24-hour training, just due to the area  
7     we live in.

8                 By mandating this training, that doesn't mean  
9     that all of these companies have to pay for that training.  
10    Once again, what happens in my area is it's considered to be  
11    a big plus if you come to apply for a job and you already  
12    have that training.

13                Most employment companies ask you, right out of  
14    the gate, Do you have that training? Chances are, they  
15    don't want to talk to you if you don't have that training.

16                So, bottom line, these folks that think that  
17    possibly they're not going to have the employees to do their  
18    job because they're requiring training, I think they're in  
19    error. I can see why they think that, but this would  
20    essentially be the tools of the trade. That would be a more  
21    valuable individual if he had that training. So I don't  
22    think there's going to be a problem there at all.

23                Initial training, I pretty much already covered.  
24    But in that first eight hours, I'm thinking that you need to  
25    do hazard training, transportation and communication,

1       electrical hazards, and certainly escape-way.

2                   And maybe that's not all of it but, certainly, I  
3       feel as though those topics should be covered.

4                   First aid. I'm one of those that I believe  
5       everybody should know first aid and CPR. It's been stated  
6       that some individuals are not capable of learning CPR, for  
7       instance. I guess I could agree with that.

8                   But first aid, in itself, is simple. It's just  
9       simply, as you folks know, basically taking the white stuff  
10      and putting it on the red stuff. You know, if an individual  
11      is bleeding, you need to control the bleeding. First aid  
12      is, essentially, simple.

13                  But that could still be a secondary issue that  
14      could come sometime in their 16-hour training, if you have  
15      an individual on that site that already has advanced first  
16      aid.

17                  And I mean, I can see where first aid could  
18      become a secondary issue. But you at least need that eight  
19      hours of training. By not providing that training, you're  
20      essentially saying that production is our main goal.

21                  You want to give everybody the same opportunity  
22      to come to that job site and give you a good day's work for  
23      a fair dollar, and do the same thing tomorrow. So I think  
24      the training is very, very important.

25                  The training topics covered, I believe that Part

1     48 has pretty much covered what needs to be covered for  
2     anybody that becomes included in the training auspice.

3             Certainly, some of that would have to vary. For  
4     sand and gravel -- one of the comments was, for instance --  
5     geez, I can't think of what Section it is -- but in Part 48,  
6     it's self-rescue and respiratory devices.

7             Well, obviously, somebody that's working in a  
8     sand and gravel yard does not need a self-rescue, nor the  
9     training on. But respiratory devices is certainly also  
10    respirators, and they do need that training. So that is a  
11    relevant topic for them.

12            Training plans. I think a training plan is  
13    important from the standpoint that, if you're the trainer  
14    today -- now, that's whether or not you're a certified  
15    trainer.

16            And personally, I believe that if they don't  
17    require certified trainers, they should at least require the  
18    individual to go through a training course so that he knows,  
19    within himself, that that material is being presented  
20    correctly.

21            But the training plan itself, I think it's fair  
22    to assume that, if you have a training plan on-site, or at  
23    your main office, or wherever it's kept, that at least, if  
24    somebody else comes in to that training, i.e., the  
25    supervisor, he has something to look at to know pretty much

1     what training is supposed to be presented and at least some  
2     idea as to how it's supposed to be presented.

3                 Now, obviously, the supervisors are pretty much  
4     the experts on most of these jobs. There's no question  
5     about it.

6                 Generally, supervisors become supervisors because  
7     they've got a great deal of training at those jobs. That  
8     doesn't imply, to me, that, because they have a great deal  
9     of expertise in, for instance, loading a hole, or to keep it  
10    even simpler, expertise in wiring the round in and timing an  
11    explosion, that doesn't tell me that this individual knows  
12    that you need to check the burning rate of fuse.

13                You know, there's just some things that are over  
14    and above, maybe, what you've done for a lot of years.

15                Being in a trade for a lot of years tends to  
16    bring about complacency. And that doesn't necessarily imply  
17    that the individual wants to do that, I just think it's  
18    human nature. You become narrow-sighted. You're looking  
19    from Point A to Point B, and you're maybe not thinking about  
20    the what-ifs that are going along beside you. From that  
21    standpoint, I think that you do need to involve trainers.

22                Let's see. The time frame for training, I agree  
23    with every one of these folks that said that it should be up  
24    to the operators. If they want to do one minute or five  
25    minutes or 30 minutes, or whatever they want to do, as long

1 as that training is being completed, I think they should be  
2 entitled to do.

3 Now, when I was a safety director in the past, I  
4 actually tried that training where you break it down into --  
5 it's 30-minute, at this point, in Part 48 -- but now, we  
6 broke it down into 30 minutes, and we had 165 employees, and  
7 I had -- for lack of a better word here -- one hell of a  
8 time keeping everybody trained, due to vacations, being  
9 sick, being away at training, you name it.

10 It was just a nightmare. So from that  
11 standpoint, I would recommend the eight hours annual, but I  
12 still think it should be left up to the operator how they  
13 want to do the training, as long as they're doing the  
14 training.

15 Instructor. I touched on that a little bit. I  
16 do think the supervisors and a lot of the office folks and  
17 that sort of thing have a great deal of information to  
18 provide in training. There's a great deal of knowledge  
19 there. They should be able to stand there and talk their  
20 subject as long as they want to talk it.

21 But I still believe that there should be, beyond  
22 a competent person, a person that has been through  
23 instructor's training, once again, so that they know what  
24 has to be done within the law and they know it's being done  
25 correctly.

1           You know, it's very, very important to get the  
2           information out. But it's very much more important to make  
3           damn sure that the information is understood. And that may  
4           be where that instructor comes in, even if he doesn't become  
5           certified, if he goes through the course. And that would be  
6           that individual that actually wanted to be there.

7           And that's -- well, one more thing I wanted to  
8           touch on, on the training plan. We hear about the costs of  
9           training plan.

10           Now, our program, in Wyoming, we actually do  
11           charge for training. But now, training plans, if somebody  
12           calls in and said, Well, you know, we want to put together a  
13           training plan. What do we need to do? I generally tell  
14           them, Come on in to the office when you have some time; or I  
15           can come to your office; or we'll meet downtown and have a  
16           cup of coffee.

17           And I bring a generic training plan and tell  
18           them, you know, This is how you go about this thing. And  
19           there's no cost to it at all. The biggest pain with that is  
20           actually sitting down and doing one for your company and  
21           getting off in the mail, all of that sort of thing. But  
22           there shouldn't be a great cost for that.

23           I've seen -- in fact, my neighbor across the  
24           street is an owner of a plumbing outfit. Now, you don't  
25           think of plumbers as people who would have their own

1 training plan. He certainly does. He believes in this  
2 Part 48. And I suppose it doesn't hurt at all, all the  
3 mining around. He's more apt to be able to work on those  
4 mine sites because he's got the training.

5 But he tells me he believes in this training.

6 And that's all I wanted to say.

7 CHAIRPERSON ALEJANDRO: Do you have any  
8 questions?

9 MR. BRELAND: I just had one. When you say that  
10 if they weren't designated as approved instructors, you  
11 think they should have an instructor training course, are  
12 you referring to the present MSHA three-day certified course  
13 for instructors, or what?

14 MR. CODY: That is, indeed, the course that I'm  
15 referring to, though maybe there could be some modifications  
16 on that. I'm not necessarily recommending that.

17 But now, at this point in time, we do seminars  
18 all over our state. And we are actually doing a modified  
19 instructor kind of a training thing, even though there's no  
20 certification to it or anything.

21 We tell them, at the end of this, that if they're  
22 interested in this thing and they need -- they feel as  
23 though they want to become an instructor, then they need to  
24 come by and actually go through the three-day course. But  
25 we offer a modified thing already.

1                   CHAIRPERSON ALEJANDRO: How long is that, the  
2     modified?

3                   MR. CODY: Well, I have to be honest and say  
4     that's varied. There's been a great deal of interest in it,  
5     but we try to do it for, like, an hour. And that just  
6     touches on the highlights, if you will. And then, if  
7     they're interested, like I say, we tell them, Come on down.  
8     We'll put you through the training.

9                   I don't -- I've been a certified instructor for  
10    many years, and I've always been proud of that fact. But  
11    from the standpoint of sand and gravel and all the other  
12    various mining entities that are facing these new rules, I  
13    can see where maybe they feel that they don't need to be  
14    certified.

15                  But once again, I would recommend, at minimum,  
16    they be required to go through, at least, the course. If  
17    they don't want the card, so be it, but at least they've got  
18    the training behind them to get the information out  
19    correctly or see to it that it is getting out correctly.

20                  CHAIRPERSON ALEJANDRO: When you say that they go  
21    through the course, are you talking about the three-day  
22    course?

23                  MR. CODY: Yes, I am.

24                  CHAIRPERSON ALEJANDRO: Okay.

25                  MR. BRELAND: Are you talking about all people



1     that do training, or the designated person in charge of  
2     training?

3                   MR. CODY:   I'm talking about a designated person  
4     within their company.

5                   CHAIRPERSON ALEJANDRO:   Who would be a  
6     coordinator of maybe other people who provide instruction in  
7     specific areas?

8                   MR. CODY:   Somebody to steer the ship.   Somebody  
9     to make sure that it's going the right course, whatever his  
10    title might be, or her title.

11                  MS. FONTAINE:   Okay.   You said that a company can  
12    get a generic training plan?

13                  MR. CODY:   Here about a week-and-a-half ago --  
14    now, this wasn't for a training plan -- but a week-and-a-  
15    half ago, I sent one of my instructors to Texas.

16                  And the reason was that they had planned on  
17    coming to Wyoming for some training, and it was better for  
18    them if they could acquire the training right there.

19                  So I sent one of my instructors to Texas.   Of  
20    course, two of their people couldn't make it, so they came  
21    to the training in Gillette, anyway.

22                  But for training, I believe you need to go and do  
23    what you need to do to get the training out there.

24                  Once again, as I said when I began talking, our  
25    biggest danger today, and very likely, as always, is a lack

1 of information.

2 Those people might be the best in the world at  
3 whatever their trade is, but if they don't have that safety  
4 training up front, if they don't have that knowledge up  
5 front, they're a walking, talking accident. They're ready  
6 to be hurt, through no fault of their own.

7 MS. FONTAINE: Could you give me a range of costs  
8 for small mine, if you would go to a small mine to put on  
9 training for them?

10 MR. CODY: The cost? Now, I have to say, if it's  
11 a small mine -- we have a standard cost, for various  
12 reasons. First off, new miner training, being the most  
13 expensive, is \$81 through our facility. And the reason for  
14 that is because there's a credit-and-a-half college credit  
15 towards mining technology included in that.

16 Other costs, for instance, annual refresher,  
17 that's 30 bucks. But that cost -- even though the cost of  
18 the individual won't vary -- most people come to us, okay?

19 But if we go out to the mine site, it may be a  
20 situation where they've got enough people to pay for our  
21 instructor to come out there, that we -- and realizing  
22 they're a very small company -- we've cut the costs.

23 We're looking at cutting the overall cost as of  
24 the first of next month. But we have cut cost, for certain  
25 companies, from our standard or our customary cost, the

1     reason being, the training is important. But you have to  
2     pay for the instructor, so you have to get some money out of  
3     the deal to pay for these instructors.

4             But even at our customary cost, we talked  
5     about -- or it was mentioned that the one outfit had eight  
6     employees on-site and there was quite a bit of money spent a  
7     year on training those individuals, and that's a good deal.

8             If the company is going to spend that kind of  
9     money training that few of employees, I applaud them.

10            But just annual refresher for those individuals,  
11     if you're talking eight of them, you're talking 240 bucks.  
12     I don't think 240 bucks is too much money to spend on a  
13     group of employees to make sure that it's reiterated.

14            After you do the 24-hour training, or the  
15     eight/16 method, or however it is, you're going to, if your  
16     company's worth its salt at all, you're going to do toolbox  
17     meetings or safety meetings, or whatever their term for it  
18     is.

19            You're going to do that throughout the year, and  
20     you're going to talk about relative subjects that's going on  
21     in your company today, you will.

22            Within those, you're very likely -- you should  
23     be, anyway -- reiterating what you talked about in your  
24     initial training.

25            But to think that you're spending too much money

1 covering initial training and too much money for annual  
2 refresher, to me, is ludicrous.

3 I see it as a big savings, over a period of time,  
4 because you're going to have less accidents; you're going to  
5 have employees that -- well, it's comparable to, if I think  
6 I'm working in a pigpen, I very likely am. If I think that  
7 the company doesn't care about my welfare, I'm very likely  
8 not going to stay there. You see what I'm saying?

9 If you're showing your employees that you do care  
10 about their welfare, they're more likely to stay there and  
11 do you a good job, a good, safe, productive job. You're  
12 going to save money.

13 MS. FONTAINE: Thank you.

14 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.  
15 Cody.

16 MR. CODY: Thank you.

17 CHAIRPERSON ALEJANDRO: Yes. Would you like to  
18 speak, sir?

19 MR. MANZANARES: Once again, my name is Tino  
20 Manzanares. I'm with County Technical Services.

21 I promised myself that I would just sit there and  
22 I would not make any comments, I would just listen. But I  
23 found it extremely difficult to just be quiet.

24 And I do want to extend my congratulations to the  
25 gentleman who spoke last. I whole-heartedly endorse what he

1 has said.

2 Within the last few years, we have trained over  
3 5- to 6,000 surface miners, sand and gravel operations,  
4 everything from a hole in the ground, to a screening plant,  
5 to a sand and gravel operation, to a batch plant, hot plant,  
6 in the pit.

7 I am whole-heartedly an endorser of training. I  
8 asked the gentleman earlier, you know, Have you put any  
9 price on how much it costs when an employee is injured and  
10 he's not able to do his job and you have to hire somebody  
11 else?

12 I was recently contracted, requested to do some  
13 training for a company, if I could do it in Spanish. I said  
14 yes.

15 I agreed to do a 16-hour class in Spanish,  
16 although I had to translate everything that I -- the  
17 approved mine certified training program under MSHA -- I had  
18 to translate that and do that in Spanish.

19 I was elated to find out that, when I did the  
20 training, the employees, who not only did not speak English,  
21 but they couldn't read or write English or Spanish.  
22 Therefore, at the end of the class, I was surprised at the  
23 amount of information that was retained by these employees.

24 Everybody is trainable. There are certain limits  
25 to some and certain limits to others.

1                   Management must be held accountable for the  
2                   actions of their employees. Of the employee doesn't want to  
3                   attend class, that's why he only got to the third grade. He  
4                   played hooky for the rest of the time. But since he is the  
5                   property of the employer, management must be held  
6                   accountable.

7                   Every time there is an injury, in my opinion,  
8                   there is a failure in management.

9                   Getting back to thing that I said. Yes. People  
10                  are trainable. They will learn, everything from the very  
11                  basic first aid and CPR to a person who has never seen a  
12                  picture of a lung, when you teach silica training or you  
13                  teach respirators. All of these people are trainable.

14                 A great percentage of our employees are  
15                 illiterate. And how do we train those, unless we provide  
16                 training in a formal manner?

17                 Yes. I am a whole-hearted endorser of the ten-  
18                 minute toolbox talks. We do an extensive amount of it.

19                 We have over 400 videos that we can use, and many  
20                 of those are five-minute videos. I can teach a front-line  
21                 supervisor, provide a topic with him, to go along with that  
22                 five-minute video, and he can do it in ten minutes, very  
23                 effective training.

24                 It's easier to move one trainer to visit a site  
25                 than it is to move 25 people to a hotel in town and provide

1 all of those facilities.

2 I provided training individual mine sites in my  
3 van, where I only had three people in the van at a time.

4 So training is essential, if we are to prevent  
5 and reduce the injuries to the employees.

6 Thank you.

7 CHAIRPERSON ALEJANDRO: Thank you very much.

8 Yes, sir?

9 MR. OSTER: I'm Greg Oster, O-S-T-E-R, from  
10 Camas.

11 CHAIRPERSON ALEJANDRO: From -- excuse me?

12 MR. OSTER: Camas, C-A-M-A-S, Minnesota.

13 I really wasn't going to say anything, because  
14 I'm pretty much in agreement with the Part 46, with the  
15 National Stone, and the coalition there.

16 But I think it's interesting, as I listen to all  
17 the comments today. And a good share of the people that  
18 spoke here today are really people making money off our  
19 industry.

20 And I think that we need to keep in mind -- and  
21 I'm not disagreeing with anybody. In fact, our company, we  
22 exceed all the training that's being required. I mean,  
23 we've never let off. And good companies haven't done that.  
24 They continue to do good training and all that.

25 But I think one of the problems I hear here today

1 is that, you know, for example, Tino and his insurance  
2 company and his accidents and all that type of thing that  
3 he's talking about, none of us want accidents. There isn't  
4 a person in this room that wants an accident. And there's  
5 not a person here that's ever been to a fatality that wants  
6 to go back there again.

7 And so, you know, sure, it makes sense to have  
8 training. And I know Harry very well, personally. And  
9 Harry talks from his side, from the Union side, as he wants  
10 training, he wants the best training for his group of  
11 people.

12 But what I think we're really saying here is  
13 that, when this all done and the new law is published,  
14 there's only one group of people that are going to be held  
15 responsible, and it's going to be the operators of these  
16 operations.

17 And when you all come in and the people who are  
18 doing the eight-hour training from the grants programs, they  
19 come in, and they spend two days in the operation or one  
20 day, and they do their training and they leave, we're still  
21 there operating and we're still trying to figure out how  
22 we're going to do this so we don't have any trouble at MSHA.

23 And I think good companies ought to be saying  
24 that MSHA regulations should be minimum requirements. You  
25 know, today we've talked like it's the only thing we should



1 be doing.

2 And I think, long-term, if you look at Part 46,  
3 and what National Stone and their coalition is really  
4 saying, is that we want to do training, we want to do good,  
5 effective training.

6 And I think what happens when you get in these  
7 groups is we get all worked up on how we're going to  
8 effectively do this, legally, so we don't have legal  
9 problems after the new regulation is put in place.

10 But I think the key here is that we want to have  
11 effective training for our employees, and not just what  
12 we're talking about here today, but maybe we're going to  
13 have to exceed it if we're going to stay in business.

14 A good share of companies that are in our  
15 industry nowadays, compared to 20 years ago when this law  
16 was in effect, are self-insured. They don't have a \$5, or  
17 \$50, or \$100, or \$1,000, or even a \$5,000 deductible  
18 anymore. They have quarter-million-dollar deductibles and  
19 half-million-dollar deductible per accident.

20 So I think what I'm trying to say here is that  
21 the operators are the ones that virtually end up with this  
22 regulation.

23 And when you look at it -- I was involved in it  
24 when it was Part 48, back in the late '70s. And one of the  
25 reasons I think it never really flew is it never fit this

1 industry properly and nobody felt that it did.

2 It wasn't that people didn't want to do the  
3 training. And I think, if you look in our industry, I'll  
4 bet there's a good share, 80 percent of the companies that  
5 are involved in this industry, may have done training, or  
6 more. I don't know what the number would be.

7 But I never run into very many people that aren't  
8 doing training. And they didn't have to do it, but it's  
9 good business.

10 And when you have high deductibles or no  
11 insurance, you can't afford to have accidents, or you're not  
12 going to be in business. You're going to be getting sold.  
13 And we buy those kind of companies every day, companies, all  
14 the time, that haven't kept up with safety, haven't kept up  
15 with environmental, have high accidents. They can't stay in  
16 business.

17 So I think the training is important. And I  
18 think that the main thing with these regulations is that we  
19 have to get all the details worked out and how we're going  
20 to all do it.

21 But I think the real important thing is that we  
22 get effective training for our employees and our managers.

23 You know, we tend to talk about employees, but  
24 the supervisors need it just as well. And we need to be  
25 able to figure out how we're going to do that in a way

1     that's cost effective and -- you know, our training costs  
2     for coming out and doing a training from, for example, the  
3     grants program, is cheap. It's the labor that costs the  
4     money.

5             For example, in our company, we're going to do 33  
6     days of training for about \$20,000 for an instructor. And  
7     labor is going to run over \$300,000 for the employees.

8             CHAIRPERSON ALEJANDRO: You're talking about that  
9     normal compensation of the miners that are being trained?

10            MR. OSTER: Of the employees, while they're being  
11     trained, and the managers, and things like that.

12            So you have to pay them and you have to rent  
13     rooms, and all that.

14            That's good money spent, if it's a good,  
15     effective safety training.

16            But if it goes back to when it was in effect like  
17     in '78 and '79, when you're doing statutory rights and  
18     you're training on things that just, you know, year after  
19     year, if you took a look at that, and it that had stayed in  
20     place and we hadn't modified it, you're doing training on  
21     things that are not helping reduce accidents. You're just  
22     kind of being repetitive.

23            So we need to have the flexibility to do good,  
24     effective safety training. So when we're dealing with the  
25     type of accidents we're having and the types -- every

1 operation might be different, in a company itself. And  
2 that's what you need to deal with so you don't have any  
3 accidents.

4 So we are paying Tino's company too much money,  
5 at the end of the year. So he had some profits. Good for  
6 you.

7 That's all I wanted to say.

8 CHAIRPERSON ALEJANDRO: Okay. Any questions?  
9 Thank you very much, Mr. Oster.

10 MR. HUNKE: My name is Chris Hunke, H-U-N-K-E.  
11 And we're a sand and gravel producer in central and western  
12 Nebraska.

13 CHAIRPERSON ALEJANDRO: What's the name of your  
14 company?

15 MR. HUNKE: Paulsen, Incorporated, P-A-U-L-S-E-N.

16 CHAIRPERSON ALEJANDRO: Okay.

17 MR. HUNKE: And the only comment I have is that I  
18 think that if industry and MSHA works on this as partners,  
19 that I think it will become a reality.

20 Our greatest fear is that it's another avenue for  
21 MSHA for write citations. And there are people -- there are  
22 MSHA inspectors out there that that is the way they're going  
23 to look at it.

24 And if MSHA will focus on the same way industry  
25 is, as far as trying to protect our workers, make it a

1 better, safer, work place, I think this will all work.

2 That's the only comment I have.

3 CHAIRPERSON ALEJANDRO: Thank you very much.

4 MR. QUIST: My name is Al Quist. I work for  
5 Camas, Colorado.

6 CHAIRPERSON ALEJANDRO: Could you spell your last  
7 name?

8 MR. QUIST: Q-U-I-S-T.

9 This last gentleman hit a note. And you know,  
10 working together is, I think, what we have to accomplish out  
11 of all of this.

12 And it took that rash of fatalities to get a  
13 walk-and-talk session, where the inspectors came out to our  
14 mine sites and got down in the trenches with our people,  
15 either on a one-to-one basis, or I know, in my company, I  
16 had a little advanced information that they were going to be  
17 doing that.

18 So I called MSHA and I said, Well, we're going to  
19 have safety meetings. Can we schedule your inspector to be  
20 at our safety meeting, and I'll do my thing, and then you  
21 step up and you, you know, talk heart-to-heart to the guys,  
22 to what's going on in our industry.

23 And I felt that's the first time, and it's been  
24 the only time, that we've really had the inspectors who see  
25 the aftermath of a fatality or they see the aftermath of a

1 very serious accident or the potential accidents, to look at  
2 our employees from, you know, a regulatory view, and say,  
3 Guys, we really have problems out there, and this is what I  
4 see.

5 And they related some very graphic stories that  
6 just put people back on their heels. And I think it did  
7 more good by having the inspectors come out and talk to our  
8 people, and I invite that, anytime, anyplace, within our  
9 organization, if they come out and talk to our people, and  
10 not just be the traffic cop writing the tickets.

11 And I know that's what they're there to do. And  
12 I understand it, and all our employees understand it. And  
13 when we're in violation, we get a citation, and we live with  
14 it. And that's the way it is.

15 But I feel that working with us is also  
16 important. And I know the Rocky Mountain district has had  
17 annual training sessions where we would send our people to,  
18 and we appreciate that, and we try to send as many people as  
19 we can from our operations to get information from MSHA,  
20 because it doesn't happen that often.

21 It happens once a year. We'd like to see it more  
22 often.

23 But we'd also like to invite -- at least, I  
24 would -- inspectors to participate in the safety meeting,  
25 because they have a lot of information, they see a lot of

1 things, and they give feedback as to what they have seen at  
2 our operations.

3 And it's a working together relationship that we  
4 would like to see more of.

5 That's all I have to say.

6 CHAIRPERSON ALEJANDRO: Thank you very much.

7 Anyone else?

8 Okay. I would again like to thank you all for  
9 coming. And I look to forward to working with you in the  
10 coming months, as we try to pull something together on this.

11 Again, if you're one of the people who needs an  
12 attendance list, we'll see whether we can get you a copy.

13 Thank you.

14 (Whereupon, at 11:45 a.m., the meeting was  
15 concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: N/A  
CASE TITLE: Meeting for Public Comment  
HEARING DATE: December 9, 1998  
LOCATION: Denver, Colorado

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Department of Labor.

Date: December 9, 1998

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